Conflicts, Confessions, and Contracts

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Conflicts, Confessions, and Contracts

Diocesan Justice in Late Fifteenth-Century Carpentras

By

Elizabeth L. Hardman

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Introduction

In the late 15th-century diocese of Carpentras, on any given day barring holy days, one could witness the coming and goings of the bishop's spiritual court (or "officiality"). Clergy and laypeople from a variety of social backgrounds told stories of wounded honor, rebellions against ecclesiastical authorities, unpaid debts, thefts, and failures to attend to their personal salvation. With them were witnesses and proctors, and the legal functionaries under the guidance of the judge, or "official," who managed the lively business of diocesan justice. It was a space of both confrontation and mediation. Just as communicants regularly appeared to receive the wafer and exchange the kiss of peace, so too they engaged with the Church and fellow residents in a more adversarial context, but one that also was meant to save souls and preserve a public peace that could be fragile in a fractious diocese beleaguered by unruly clergy and inter-religious conflict. While the bishop's judge (and those acting in his name) could be dogged in their pursuit of recidivist offenders and local clerical gangs, their role often was limited to tracking sinners and conflicts, protecting the clergy, and mediating disputes. In the process of exacting justice, the court created a legal and confessional space exploited by the criminal defendants it confronted. Others, including the diocese's Jews, used this space to register contractual disputes with a legal authority and pressure opponents to address them. The bishop's justice targeted a small group of criminal offenders and provided services to a wide range of creditors, and in the process, defined the boundaries of what was acceptable, kept an eye on developing conflicts, and entrenched itself in the process of negotiating economic disputes.

The bishops' officialities (often called "consistory courts" in England) were part of local justice systems but also integrated and universalized the entire Church's maintenance of the faith, exercise of discipline, and social regulation throughout Latin Christendom. These church courts followed their own law, the canon law, and heard cases according to the person involved, the substance of the offense, and/or the location of the crime. Their mandate included the discipline of the clergy and the moral regulation of laypeople. Its competency covered many offenses committed by the clergy, though serious offenses were increasingly reserved by secular authorities, particularly homicide and brigandage. Over laypeople, the courts' regulatory scope could extend to matters concerning religious behavior (personal salvation, orthodoxy), family affairs (sexuality, marriage, inheritances), church property (benefices, tithes), and economic exchanges involving personal oaths (debts, business contracts).

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Medievalists are no strangers to church courts, but aspects of their practices, functional jurisdictions, and quotidian socio-economic roles remain understudied, especially outside northern France and England. Additionally, much recent work focuses on sexual and marital litigation alone. Late 19th- and early 20th-century scholars, like Paul Fournier, Adhémar Esmein and Léon Pommeray, began to describe not only the canon law, but the practices of its courts.[1] By the late 1970s, scholarship using court records to understand the personnel, competence, jurisdiction, and sanctions of canonical courts gained traction. Ambitious projects resulted, like that of Anne Lefebvre-Teillard who not only described the general nature of French officialities, but also their regional variations.[2] Like the majority of scholars, her case studies focused particularly on marital litigation and its relationship with sexual norms.[3] Since the 1980s, James A. Brundage, Charles Donahue Jr., and Richard H. Helmholz have driven the field forward by rigorously pursuing questions about the evolution of canon law, court practices, the interactions between legal systems, and

1 Paul Eugéne Louis Fournier, *Les officialités au Moyen Âge: Étude sur l'organisation, la compétance, et la procédure des tribunaux ecclésiastiques ordinaires en France, de 1180 à 1328* (Paris: Plon, 1880); Adhémar Esmein, *Le marriage en droit canonique*, 2 vols. (1891; reprint, New York, B. Franklin, 1968); Léon Pommeray, *L'officialité archdiaconale de Paris aux XV^e–XVI^e siècles: sa composition et sa compétance criminelle* (Paris: Librairie du Recueil Sirey, 1933).

2 Lefebvre-Teillard, "Règle et réalité dans le droit matrimonial à la fin du Moyen Âge," *Revue de droit canonique* (1980): 41–54 and *Les officialités*, 145–206.

3 For the major studies of marriage litigation in church courts, see: Charles Donahue Jr., "English and French Marriage Cases in the Later Middle Ages: Might the Differences Be Explained by Differences in the Property Systems?" in *Marriage, Property, and Succession*, (ed.) Lloyd Bonfield, 339–66 (Berlin: Duncker and Humblot, 1992); Beatrice Gottlieb, "The Meaning of Clandestine Marriage," in *Family and Sexuality in French History*, (eds.) Robert Wheaton and Tamera Hareven, 49–83 (Philadelphia: University of Pennsylvania, 1980); Richard H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge: Cambridge University Press, 1975); Jean-Philippe Lévy, "L'officialité de Paris et les questions familiales à la fin du XIV^e siècle," in *Etudes d'histoire du droit canonique, dediées à Gabriel Le Bras*, vol. II, 1265–1294 (Paris: Sirey, 1965); Sara McDougall, *Bigamy and Christian Identity in Late Medieval Champagne* (Philadelphia: University of Pennsylvania, 2012); Shannon McSheffrey, *Marriage, Sex, and Civic Culture in Late Medieval London* (Philadelphia: University of Pennsylvania Press, 2006); Frederik Pedersen, *Marriage Disputes in Medieval England* (London: The Hambledon Press, 2000); Michael Sheehan, "Formation and Stability of Marriage," *Medieval Studies* 33 (1971): 228–63; Monique Vleeschouwers-Van Melkebeek, "Self-divorce in Fifteenth-Century Flanders: the Consistory Court Accounts of the Diocese of Tournai," *Tijdschrift voor Rechtsgeschiedenis: Revue d'histoire du droit / The Legal History Review* 68:1–2 (2000): 83–98.

the social norms revealed by court records.[4] Scholars drew upon a growing base of sources, including visitation records, episcopal act books, fee books, records of censures, synodal statutes, monastic cartularies, and inquisitions. As Jan Bulman argues for the south-central diocese of Mende, the records themselves created not only a historical memory but helped establish jurisdictional boundaries that were, and continued to be, contentious.[5] While England remains a focal point of the historiography, work on spiritual justice and canon law courts in France grew substantially, including close studies by Vital Chomel on Bayeux, Andrée Courtemanche on Fréjus, Nicole Gonthier on Lyons (which treats a broad set of temporal and spiritual courts controlled by the Church), François Neveux on Grenoble, among others.[6] In 1994 and 2007, southern French church courts received special attention in two collections of studies on ecclesiastical law and justice in the region in the *Cahiers de*

4 Major general synthetic treatments include: James A. Brundage, *Medieval Canon Law* (London and New York; Longman, 1995) and idem, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (Chicago: University of Chicago Press); Charles Donahue, Jr. and Norma Adams, (eds.), "Introduction to Select Cases," in *Select Cases from the Ecclesiastical Courts of the Province of Canterbury c. 1200–1301*, Selden Society 95 (London: Selden Society, 1981); Richard H. Helmholz, *The Spirit of Classical Canon Law* (Athens, GA and London: University of Georgia Press, 1996). On the relationship between the development of canon, Roman and common laws, see: Donahue , "Proof by Witnesses in the Church Courts of Medieval England: An Imperfect Reception of the Learned Law," in *On the Laws and Customs of England, Essays in Honor of Samuel E. Thorne*, (eds.) Morris S. Arnold, et al., 127–58 (Chapel Hill: University of North Carolina Press, 1981) and idem, *Sex, Law and Marriage in the Middle Ages* (Aldershot: Variorum, 1993); Helmholz, *Select Cases on Defamation to 1600*, xi–lxv (London: Selden Society, 1985) and idem, "Crime, Compurgation and the Courts of the Medieval Church," *Law and History Review* 1 (1983): 1–26. For general studies of the jurisdictional trends particular to England and the common law, see also: Brian L. Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (Oxford: Oxford University Press, 1974); Richard M. Wunderli, *London Church Courts and Society on the Eve of the Reformation* (Cambridge, MA: The Medieval Academy of America, 1981).

5 Jan Bulman, *The Court Book of Mende and the Secular Lordship of the Bishop: Recollecting the Past in Thirteenth-Century Gévaudan* (Toronto: University of Toronto Press, 2008).

6 Vital Chomel, "Note sur l'activité disciplinaire des officialités du diocèse de Grenoble, 1418–1449," in *Études historiques à la mémoire de Noël Didier*, Université de Grenoble (Paris: Montchrestien, 1960), 49–59; Andrée Courtemanche, "Morale sexuelle des clercs et des laïcs à Fréjus au XIV^{e} siècle," *Revue de l'histoire des religions*, 4 (1992): 349–80; Nicole Gonthier, *Délinquance, justice et société dans le Lyonnais médiéval: de la fin du XIII^{e} siècle au début du XVI^{e} siècle* (Paris: Éditions Arguments, 1993), 22–29, 159–70. François Neveux, "Les marginaux et le clergé dans la ville et le diocès de Bayeux aux XIV^{e} et XV^{e} siècles," in *Marginalité, déviance, pauvrété en France, XIV^{e}–XIX^{e} siècles,* (ed.) Paul Dartiguenave, *Cahiers des Annales de Normandie*, vol. 13 (Caen: Annales de Normandie, 1981), 17–41.

Fanjeaux, a series dedicated to religion in the Midi, helping to redress the focus on northern France and England.[7]

While the Church's canon law developed a uniform set of procedures for all its dioceses, procedural norms varied by region and the courts' competency and role in local regulation changed over time. The majority of the scholarship explores northern European ecclesiastical courts and often larger dioceses in close interaction with royal power, but such examples may not reflect the experience of the many smaller or more remote dioceses, or those outside the sway of secular royal legal jurisdictions. The understandable focus on marital regulation, too, can obscure the courts' multivalent regulatory role over petty violence, theft, and the disciplining of the clergy. Officialities could play a vital role in local justice, responding to unique problems outside the concerns and reach of royal jurisdictions, though their jurisdictions could compete with civic authorities.

The nature of the caseload at Carpentras compares well with other often neglected officialities of southern Europe, as well as with the lower church courts of northern Europe – placing it within such a context is one of the goals of this study. Its peculiarities, particularly as a papal enclave, present us with an interesting counterpoint to those within secular, royal jurisdictions. Additionally, this study seeks to understand how its justice broadly compares to secular justice in the later Middle Ages.

Increasingly, it has become clear that unique regional legal landscapes, local customs of cooperation (or conflict), and the gravity of the crimes at stake shaped functional jurisdictions.[8] Case studies suggest variation. For instance, Cynthia Neville states that clerical privilege was respected in England, but that the preservation of jurisdictional boundaries was less important than effective punishment when it came to clerks accused of grave crimes like homicide: her 14th-century example suggests that church officials openly acknowledged the "appropriateness" of secular justice in such cases and doubted the efficacy of

7 Marie-Humbert Vicaire and Étienne Delaruelle, (eds.), *Les justices d'Église dans le Midi* (*XI^e–XV^e siècle*), Cahiers de Fanjeaux, Collections d'Histoire religieuse du Languedoc au Moyen Âge, 42 (Toulouse: Privat, 2007) and, idem, *L'Église et le droit en France méridionale* (*XIII^e–XIV^e*). Cahiers de Fanjeaux, Collections d'Histoire religieuse du Languedoc au Moyen Âge, 29. (Toulouse: Privat, 1994). Jacques Chiffoleau's study of the broad the pope's seigneurial and spiritual justice, two powers that were difficult to distinguish between, will be discussed below. See: *Les justices du pape: délinquances et criminalité dans la region d'Avignon au quartorzième siècle* (Paris: Publications de la Sorbonne, 1984).

8 See, for example Helmholz, *Canon Law and English Common Law*, Seldon Society Lecture, 5 July 1982 (London: Seldon Society, 1983), 6–9 and *Select Cases on Defamation*, xiv, xvi, xx, xxv).

their own sanctions and procedures (especially compurgation, an oath-taking practice that allowed the accused to be purged of the criminal accusation).[9] Cooperation was a solution to these limitations. Like Neville, Françoise Gasparri concludes that secular and ecclesiastical judicial authorities cooperated when it came to prosecuting grave offenses, as seen in the pursuit of a brigand gang in 15th-century Provence.[10] On the other hand, for Toulouse, Jean-Louis Gazzaniga demonstrates the extensive predatory encroachment on the church's regulation of its clerics, benefices, and property by the Parlement of Toulouse as King Charles VII exerted the authority of the crown.[11] Still, as Lefebvre-Teillard concludes for France, jurisdictional boundaries, both truncated, and less commonly, extensive were shaped by statutes specific to individual provinces. Some bishops continued to exercise a customary competence over laypeople and compromises between secular and lay courts varied by place.[12] The shared intellectual world of lawyers and proctors, and the availability of appeals to the papal curia, meant that the competency of church courts was well-understood and that the ecclesiastical courts themselves diligently adhered to the canon law. Nevertheless, functional jurisdictions shifted. Individual courts or regions also chose to pursue certain types of cases as criminal processes or to employ censures more readily (excommunication, fines, jail, etc.). In most regions, legal consumers also had some flexibility to bring their debt and contract disputes in different court systems (though when clergy or Jews were involved, restrictions applied).

Most scholars agree that the church courts lost their prestige, popularity, and scope by the mid-16th century, but the extent and timing of this process varied. Secular courts, particularly royal ones, claimed more extensive jurisdictions, wielded a wider array of legal tools to ensure faster trials and more repressive solutions, and in general, offered a judicial process presumed to have been more attractive to civil litigants and society at large. In France,

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9 Cynthia Neville, "Homicide in the Ecclesiastical Court of Fourteenth-Century Durham," in *Fourteenth Century England*, vol. I, (ed.) Nigel Saul, 103–14 (Woodbridge, Suffolk: Boydell and Brewer, 2000), 112–14. Neville acknowledges that the debates concerning benefits of clergy were largely moot: normally the church successfully defended the immunity of clerks from secular judgment.

10 Francoise Gasparri, "La crimininalité en Provence au XV^{e} siècle, in *Histoire et criminalité de l'antiquité au XX^{e} siècle: nouvelles approches, Actes du politique de Dion-Chenôve, 3, 5, Octobre 1991, Publications de l'Université de Bourgogne* 71 (Dijon: Éditions Universitaires de Dijon, 1992), 167–73.

11 Jean-Louis Gazzaniga, *L'Église du Midi à la fin du règne de Charles VII* (*1444–1461*) *d'après la jurisprudence du Parlement de Toulouse* (Paris: Picard, 1977), i–iii, 77–80.

12 Lefebvre-Teillard, *Les officialités*, 87–88.

Lefebvre-Teillard concludes that criminal cases declined sharply, while civil litigation, especially over debt, increased dramatically in Paris and remained strong in the Midi. She adds, however, that the "battle for jurisdiction was alive" between 1500 and 1520 in France, but the weak and limited coercive force available to church courts led to their decline. Richard Wunderli finds a similar situation in London: a secularizing society became increasingly dissatisfied with the court's weak sanctions and low convictions rates, and this helped justify the government's goal to police Christian morality itself.[13] He concedes, though, that church courts may have operated effectively in small communities, where they could rely upon *mala fama* and public rumor to aid in reporting and initiating cases. Though scholars argue about the timing of this disenchantment with the church courts and their subsequent loss of power and authority, many concur with the critiques of contemporaries who justified the extension of secular competencies at the expense of "weak" and "lax" ecclesiastical ones.

But the church courts were hardly moribund at the end of the Middle Ages, though as Lefebvre-Teillard illustrated for France, their practical regulatory boundaries were quite varied and shifting. Martin Ingram demonstrates that the English church courts continued to hear cases of lay sexual and marital misconduct in the later 16th through 17th centuries, whereas, if we turn to Italy, such regulation was rare in 15th-century Tuscany, according to Gene A. Brucker;[14] the same was true for southern France, though, Tuscan church courts remained useful regulators of credit and heard a wide variety of debt cases. And those studying 16th-century courts suggest, like Lefebvre-Teillard, that the jurisdictional fight waged on into the early modern period. Michael Kelly and Margaret Bowker claim that the English Commons feared the continuing popularity and effectiveness of the church courts. Stephen Lander demonstrates that Chichester's ecclesiastical courts underwent effective administrative reform and were undermined only in the 1530s due to governmental attacks.[15] Again, we are left wondering whether or not the courts

13 Wunderli, *London Church Courts*, 4, 66, 137. For sexual offenses, litigants increasingly favored the Mayor's court because of its heavier sanctions, speed, and procedures (and lack of purgation). The reputation of the church courts diminished as they became the domain of conflicts between women over defamatory speech and petty debt.

14 Martin Ingram, *Church Courts, Sex and Marriage in England, 1570–1640*. Gene A. Brucker, "Ecclesiastical courts in 15th century Florence and Fiesole," *Mediaeval Studies* 53 (1991), 257.

15 Stephen Lander, "Church Courts and the Reformation in the Diocese of Chichester, 1500–1558, in *Continuity and Change: Personnel and Administration of the Church of England, 1500–1642*, (eds.) Rosemary O'Day and Felicity Heal (Leicester: Leicester University Press, 1976), 215. Michael Kelly, "The Submission of the Clergy," *Transactions of the Royal*

of the Church lacked the tools to meet ideals of proper justice or communal needs, both of which may have been in flux. And, this also begs the question of what people – both legal authorities and the courts' consumers – wanted or expected from these courts.

These questions are not trivial and should be posed across the dioceses of Europe, particularly at the end of the Middle Ages and on the eve of the Reformation. In its courts, the Church worked to maintain or at least demonstrate its pastoral vision of good order, with varying levels of activism and constraints. An officiality's caseload, legal norms, and sanctions are suggestive of its judicial philosophy, of its vision of good justice and good governance, and of its utility. And, like visitation records, local church courts records help us gauge the comportment of, and relationship between, clerics and laypeople as a complement to rhetorical and polemical sources. These courts were one of the primary spaces in which the Church interacted with the laity (along with preaching and the confessional) and they were charged with moral discipline. Increasing numbers of critical voices challenged the morality of the Church and its members, as well and its ability to fulfill their disciplinary mandates. Was the Church upholding its rules and rooting out and censuring illicit and immoral behavior? Did its courts remain relevant and useful in a late medieval context? Did it adopt the late medieval procedural innovations in canon law, including those which extended the powers of the criminal sphere, allowed greater flexibility in initiating cases, and made it easier to summarily rule and punish the convicted? Given its salvational goals, should it have? We know that at all levels, and in both its criminal and civil competencies, ecclesiastical courts were the primary victims of royal jurisdictional aggrandizement in England and France. How did those outside such contexts, or in peculiar states, function? In the end, because the church courts' roles were constrained by secular legal institutions and the latter's quests for control over justice and its profits, we return to the importance of regional context.

The diocese of Carpentras – the focus of this study – was situated within a papal state, the Comtat Venaissan. It is time to explore that diocese and its legal landscape. The Comtat's legal system, which is described in the next section, was integrated in a unique way that supported a fairly broad role for the diocesan court, perhaps fitting for a hierarchy dominated by churchmen and for a diocese in which the bishop historically was quite powerful. Marcel

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Historical Society, 5th Series, 15 (1965): 97–119; Margaret Bowker, "Some Archdeacons' Court Books and the Commons' Supplication against the Ordinaries of 1532," in *The Study of Medieval Records: Essays in Honour of Kathleen Major*, (eds.) Donald A. Bullough and Robert L. Story (Oxford, Clarendon Press, 1971), 282–316.

David, a legal and administrative historian of the Comtat, notes that the turn of the 16th century was not a period of decay for the officiality.[16] The boundaries of its justice were set in the 14th century and the officiality did not seek to usurp temporal jurisdictions or vice versa: it heard similar cases from the 14th through the 18th centuries. But, this justice, he stated, was broader than those of the bishops of France. He left further explanation and proof of that assertion for others to pursue.

In his magisterial work on criminality in the in the region of Avignon (including the Comtat), Jacques Chiffoleau best described the legal system from 1340–1420. His work focused on temporal, seigneurial justice and notes that in the case of the bishop's justice, it is difficult to distinguish between the secular and spiritual; a later section in this chapter will indicate why the later 15th-century records no longer pose such a challenge. His wide range of sources includes the ample accounts kept by treasurers serving the bishops and officials of Avignon. He explicates the vast record-keeping habits of bishops, who were accustomed to keep archives on parishioners: they meticulously registered their baptisms, marriages, wills and deaths, maintained lists of their excommunications and confessions, and, of course, recorded their payments of legal fines. Authorities created a system of surveillance, began inculcating an internalization of self-surveillance, helped develop a sentiment of culpability, and provided a "pedagogical" function by defining the boundaries of what was licit. Curates, priests, vicars, and rectors were to conduct periodic inquests to support the project of creating a moral community. While the bishops and judges sought to control all sectors of public and private life, and even created institutional structures that facilitated "modern" justice, papal justice could still appear weak or inefficacious to modern eyes, particularly, as we shall see, when we look at the punishments meted out to most offenders. But, he demonstrates that progress made was nonetheless appreciable, and that legal servants acted as diligent, faithful agents of the state.[17]

As we shall see, in the 15th century, the officiality of Carpentras played a similarly modest, yet prominent and rarely contested role, particularly in tracking criminality, addressing violence involving clergy, and in settling debt disputes. From the records it left in 1486, 1487, and 1488, we glean quite a lot about the court's legal culture after the papal control of Avignon. We can sketch out the court's roles and its limits, particularly in its protection and disciplining of a sometimes truculent clergy and its regulation of debts. It filled a niche that

16 Marcel David, *L'organisation administrative, financière et judicaire sous la dominion des papes, 1229–1791* (Aix: Privat, 1912), 246–49.

17 Chiffoleau, *Justices du pape*, 216–66, 276–81.

remained protected by unique Comtadine administrative reforms. But how do we understand that niche?

The Comtat Venaissin, the Diocese and Its Jurisdictional Landscape

Except for a few small parishes, the diocese of Carpentras was coterminous with the Comtat Venaissin, a papal state nestled in a mountain valley just east of Avignon, bordered by the Rhône River on the west and Mont Ventoux on the east. As a papal state, and a neighbor of Avignon, the proportion of clerics within the population was substantial and inflated both by the numerous clerical administrators of the Comtat and the presence of public notaries, ubiquitous to the Midi, who could claim clerical status. The clergy included those in minor orders who practiced a wide range of professions and sometimes married. Additionally, a large and growing number of Jews lived in its towns under the protection of the bishop in exchange for a corporate oath and a tributary fee.[18] The Comtat's urban centers supported a wide array of laborers, craftsmen, and merchants, many of whom appear in the diocesan court studied here, including wet-nurses, carters, butchers, bakers, fishmongers, painters, plasterers, skinners, corders, shoemakers, carpenters, apothecaries, drapers, goldsmiths, and barber-surgeons. The architects hired in the 15th century to redesign the diocese's cathedral, the Church of Saint Siffrein, can be counted among its professionals. There was a strong presence of Italian administrators, merchants, and bankers, as well. Outside and on the edges of the towns, a mixed economy of herd, field, and viticulture characterized the region. While grain supplies did not always keep up with demand, the area usually had access to an abundant meat supply in the 15th century, particularly of mutton and beef, and attracted enough non-resident buyers to warrant comment in deliberations by Carpentras' civic counsel.[19]

The town of Carpentras was the capital of the Comtat and the diocese. Today, it is rightly famous for the weekly markets still held on Fridays, where one can enjoy its strawberries, melons, truffles, and berlingot candies. In the 15th century, it was known also as an administrative and population hub, and within the Comtat, a cultural center. In the second half of the 15th century, the large library that had served its many churchmen since the previous century

18 Marianne Calmann, *The Carrière of Carpentras* (New York: University Press, 1984), 25–28.

19 Louis Stouff, "La viande. Ravitaillement et consommation à Carpentras au XV^{e} siècle," *Annales: Économies, Sociétés, Civilisations* 24:6 (1969), 1431–1448.

grew considerably and opened to the public's use.[20] Processions for local dignitaries, mystery plays, and theatre troupes diverted the populace. And with a population of over 4,000 inhabitants, Carpentras was the Comtat's largest town. In his demographic study of the town in the mid-14th century, Robert Bautier estimates a total population ranging from 3,150 to 3,200, composed of 520 Christian, 69 Jewish, and 28 secular-clergy hearths.[21] He speculates that from 1470 to 1540, after the series of demographic crises from 1350 to 1450, the population in Carpentras, and likely the surrounding region, doubled or tripled. The family unit typical of the region in general resembled rural Tuscany as described by Christine Klapisch and Michel Demonet: large, agnatic, and undivided.[22]

The Comtat was a temporal holding of the pope, a papal state run by his representatives, and outside any royal jurisdiction. In 1229, the Treaty of Paris promised the Comtat Venaissin to the pope, an acquisition which was transformed into a papal state in the 13th century.[23] In the wake of the defeat of Raymond VI of Toulouse, this region and all his lands below the Rhône were ceded to the church in perpetuity. In 1235, the French king formally remitted the region into the pope's hands, strengthening the latter's territorial claims. The pope initially assigned as his rectors the bishops of Carpentras and the archbishop of Arles (the archiepiscopal authority of the diocese in this period), who were to govern in his name. Despite these agreements, Raymond VII retained some influence over the Comtat: he visited Carpentras in 1236 and received the homage of its bishop in 1239. Raymond died without an heir and in 1249 the Comtat was granted to his daughter Jeanne and her

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20 Henri Dubled, *Carpentras: Capitale du Comtat-Venaissin* (Marseille: J. Laffitte) 1975, 54–55.

21 Robert Bautier, "Feux, population et structure sociale au milieu du XV^{e} siècle: l'exemple de Carpentras," *Annales; historie, sciences sociales* XIV (1959), 256 and 268. He speculates that the clerical population increased in the later 15th century. Household sizes were large at Carpentras (44 Christian hearths exceeding 10 persons, 11 of which included 15–25 persons).

22 Jacques Chiffoleau, *La compatabilité de l'au-delà: Les hommes, la mort et la religion dans la région d'Avignon à la fin du Moyen Âge* (*vers 1320–vers 1480*) (Paris; École Française de Rome, 1980), 189. The number of clerics, especially the minor clergy and small groups of monks, is difficult to surmise but might inflate these numbers significantly. For Tuscany, see Christine Klapisch and Michel Demonet, "A uno pane e uno vino, la famille rural Toscane au début du XV^{e} siècle," *Annales E.S.C.* XXVII (1972): 890.

23 David, *L'organisation administrative*, 8–15; Henri Dubled, *L'Histoire du Comtat Venaissin* (Carpentras, France: C.R.E.D.E.L., 1982), 63–64; and Rose-Léone Mouliérac-Lamoureux, *Le Comtat Venaissin Pontifical, 1229–1791* (Vedène: Publications de L'Institut Vauclusien D'Etudes Rhodaniennes Comptoir Général du Livre Occitan, 1977), 28–30.

husband Count Alphonse de Poitiers, who formally held it from 1251 to 1271 and bequeathed it to the pope. In 1274, Phillipe III le Hardi responded to pressure from Gregory X and recognized papal claims to the Comtat. The pope then assigned a rector to administer the county in his name. Many institutions were kept in place, but the pope placed the county's general tribunals and councils – as well as the royal seneschal of Beaucaire who represented the Capetian king – under the rector's command. Initially the rector resided at Pernes-les-Fontaines, but from 1320, his residence was moved permanently to the largest town of the Comtat and now its capital, Carpentras.

Carpentras was the seat of the bishop of the diocese of the same name and the home of the cathedral church of Saint Siffrein.[24] The diocese included many small religious houses – prominent among them a chapter of Augustinian canons-regular (Notre-Dame du Grès, or Saint Mary of Grasse) – and many other monks of various orders whose numbers are difficult to trace.[25] In 1475, the diocese, which was previously under Arles, was placed under the ecclesiastical jurisdiction of the archbishop of Avignon, where it remained until the 19th century. Bishops were named by popes, rather than through a chapter election. The bishop, in turn, had the power to assign benefices to canonries, the cathedral chapter, churches, and priories. While his spiritual power was broad and his chapter weak, by the 15th century the bishop of Carpentras had been stripped of most of his temporal, seigneurial jurisdictions, which were taken over by the rector. A notable exception was the bishop's lordship over

24 Étienne Antoine Granget, *Histoire du diocèse d'Avignon et des anciens diocèses don't il est formé*, 2 vols. (Avignon: Seguin aîné, 1862), 1112–1113; Dubled, *Comtat Venaisin*, 72–73. Bordering dioceses include Vaison, Sisteron, Apt, Cavaillon, Orange and Avignon. The origins of the diocese (*Carpentoractensis*) stretch back at least to the 5th century. Carpentras was composed of twenty-nine parishes (all but five minor parishes were within the Comtat) and seventy-three churches. The cathedral, built from 1405 to 1519 and dedicated to this saint and Saint Peter, was the only parish church within Carpentras. Its twelve-member chapter, which included a prevôt, an archdeacon, a praecentor, and a sacristan, had few powers. Around sixty benefices were supported by it.

25 Notre-Dame du Grès was transferred outside the church of Saint-Jean-du-Bourg de Carpentras to reside in Pernes-les-Fountaines. Additionally, small but prominent religious houses included the female convent of Sainte Mary-Magdaleine (in Carpentras), and a house of friars-preachers (at Monteux). For more on minor religious houses and their roles, see the lists of houses, hospitals and charities in the Comtat and Avignon in Jacques Chiffoleau, *La compatabilité de l'au-delà: Les hommes, la mort et la religion dans la region d'Avignon à la fin du Moyen Âge* (*vers 1320–vers 1480*) (Paris; École Française de Rome, 1980), 252, 448–61.

the Jews of the diocese.[26] His episcopal curia included a canonry, secretaries, notaries, and his tribunal, whose officers will be discussed below.[27] During the period considered in this study, Pietro de Valetari, the nephew of Pope Sixtus IV, served as bishop (1483–1514).[28]

Despite periodic attempts to control the Comtat by the legate (the sovereign administrator of the pontifical state of Avignon) and to unite it by Pope Sixtus IV, it remained independent of Avignon and the rector maintained control over its governance, finances, and justice in the 15th century.[29] The rector administrated over eighty towns and castra and exerted control over the election of the syndics of major towns, including Carpentras.[30] The popes directly appointed rectors to govern in their name (if the post was held by a

26 Dubled, *Comtat Venaissin*, 73.

27 Ibid., and below at 18–24.

28 He preceded the famous reformer and Italian humanist, Jacques Sandolet, as bishop, who served from 1517–36. Mouliérac-Lamoureux, *Le Comtat Venaissin Pontifical*, 379.

29 David, *L'organisation administrative*, 32; Dubled, *Comtat Venaissin*, 63–64. When the rector was absent from the Comtat, he could name the vice-legate (who served for both pontifical states – Avignon and the Comtat – and was named by the pope) as his replacement, or "regent." Later, responding to pressure by the legate, Pope Sixtus IV attempted to unite the governance of his two French territories (the Comtat and Avignon) in 1479 under the control of the vice-legate of Avignon. The implementation of this plan stalled: the legate Julien de la Rovere soon appreciated the inconvenience and resistance that the scheme would cause and in a Bull of 1510 the separation was re-affirmed. See David, *L'organisation administrative*, 28–57; Mouliérac-Lamoureux, *Le Comtat Venaissin Pontifical*, 66–68. Much of the controversy was grounded in a defense of rights unique to the Comtat, especially their cherished privilege of "*non evocando*," i.e. the right not to be cited and have legal cases adjudicated outside the Comtat. Despite these failures, the legate and vice-legate's power over the rectors of the Comtat did increase in the next two decades. Unification was again attempted in 1512 by Leo X, who desired to place the governance of both holdings under the regent Pietro de Valetariis (1513–14), but the estates, municipal councils and communities refused to recognize the latter's authority. The two administrations were united finally in 1561. In 1513, Pope Leo X attempted to unite the two by a different path, appointing the same man, the upwardly-mobile, now-former bishop Pietro de Valetariis, as both rector of the Comtat and vice-legate of Avignon. After widespread discord throughout the Comtat over this decision – and the destruction of de Valetariis' houses – the pope re-assigned to the territory an independent rector and recognized the long-standing judicial privileges of the Comtadines. Most importantly, he re-affirmed the privilege articulated in a document "*Quod Comitatenses non extrahantur*." See David, *L'organisation administrative*, 58–62).

30 Carpentras was served by three syndics, its own civic counselors, and the counselors of the rector, who heavily influenced the representatives. See David, *L'organisation administatif*, 72–80.

layman, he held the title "regent"). Typically they recruited Italians, often from their circle of family and allies, though occasionally they choose men from France. Rectors, though not regents, exercised both temporal and spiritual powers.[31] The former bishop of Spoleto, Constantino Heruli, served as rector during this period (1485–1490).[32] Benedict XII's mid-15th-century administrative reforms re-shaped the administrative landscape within which the rector worked, reducing overlaps and decreasing the independence of the Comtat's functionaries.[33] The rector presided over a papal council that met weekly to manage the Comtat's administrative and judicial affairs, including sentences proposed in its courts. It was composed of the vice-rector, an appellate judge, a judge-major (*juge majeur*, a judge of first instance cases), the treasurer of the Comtat, and the proctor advocate fiscal.[34]

In the mid-14th century, Benedict XII re-organized secular justice of the Comtat, dividing it into three *judiciares* (Carpentras, L'Isle and Valréas).[35] These judicial entities were administered by a total of five judges-major who heard criminal and civil cases: three judges-major for Carpentras and one each for the other two zones. Under them were *viguieries* or *capitaneries* and their bailiffs (*bayles*), governors and *châtelains*. Appellate judges handled appeals, though their judgments could be appealed to the rector. Private, seigneurial jurisdictions continued to exercise their competencies. Additionally, towns maintained a variety of exclusive rights, particularly Carpentras, the only town in the Comtat with private privileges over local policing for basic public safety, the regulation of the meat market, and the inspection of weights and measures.[36] But the most basic judicial privilege uniting them all (and affirmed by Popes Boniface VII, Clement VI, John XII, Clement VII and Paul III) was

31 In some years, there were two rectors, one spiritual and the other temporal.

32 Joseph Fornery, *L'histoire du Comté et de la ville d'Avignon*, vol. I (Avignon: Francois Seguin, 1909), 493–97; Heruli replaced a layman named Amedé Michael. During this period, Julien de Rovere, later Julius II, served as legate of Avignon (1476–1503). See also Mouliérac-Lamoureux, *Le Comtat Venaissin Pontifical*, 371–76.

33 David, *L'organisation administrative*, 43; Dubled, *L'Histoire du Venaissin*, 65. Papal legates now named all officers of the Comtat, convoked the assemblies of estates and authorized civic assemblies.

34 Dubled, *Comtat Venaissin*, 73.

35 David, *L'organisation administrative*, 235–36.

36 Ibid. For the regulation of meat, including a discussion of Jewish butcheries, see: Louis Stouff, "Ravitaillement et Consommation Alimentaire à Carpentras au XV^{e} siècle," *Études Vauclusiennes* 6 (1971): 1–6. We encounter the officials who dealt with weights and measures in an *ex officio* case in the church court's criminal forum: see, *Archives départmentales de Vaucluse, B Rectorie* 3334, fols. 129v and 130r, 14 March and 14 April 1488 (Fisc. c.

"*Quod Comitatenses non extrahantur sed eorum causae intra Comitatum iudicentur*," composed in 1300, which maintained that the Comtadines had the right to have their disputes adjudicated within their county.[37] After the popes left Avignon, this organization remained intact.

The highest secular judicial forum was the Supreme Court of the Rector (*Cour Supreme de la Rectorie*, formerly the *Cour du Venaissin*). Acting in his temporal capacity, the rector presided over it and heard cases from lower courts that had wider political relevance or concerned high value property.[38] If he were a cleric, he could use spiritual penalties (censure, interdict, excommunication); he employed Roman and customary Comtadine law as he saw fit and was limited to a secular sphere of competence. The rector had the prerogative to arbitrate disputes among vassals, punish those accused of crimes on public roads, and discipline officers of seigneurs and popes. He could serve as a judge of first instance in civil affairs, but much of the secular criminal jurisdiction fell into the hands of the vice legate in the later 15th century. In criminal matters, he was chief justice of the two papal provinces, and the vice rector heard the appeals of the arrests made by the rector and called up tribunals of *viguiers*, judges major, and appellate judges. In theory, he also could rule on appeals to any criminal case. The records of the bishop's court indicate that the primary destination of its appeals was the archdiocese, Avignon, in which Carpentras was located since 1475, as one should expect for an officiality.[39] He also had the right to intervene in any high profile case of important political or economic value to the Comtat as a whole.

The spiritual court of the bishop was, as in the rest of Europe, an exceptional jurisdiction. According to canon law, an ecclesiastical authority's jurisdiction over criminal offenses was determined by reason of the person involved (*per rationem personae*), the offense committed (*per rationem materiae*) or the location of the offence (*per rationem loci*).[40] Secular authorities (serving the Comtat or individual towns) as well as ecclesiastical authorities could, and did, report and/or arrest suspected offenders, and then send them to the bishop's

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Caneneti). The community also had special rights in the regulation of credit: a sergeant of arms could place an image of a "sword" on the door of the debtors of the town.

37 For further explanation and full text, see David, *L'organisation administrative*, 352–64.

38 Dubled, *Comtat Venaissin*, 65–67, 73; David, *L'organisation administrative*, 148–57, 175–76. Since 1320, the bishop, likewise, lacked temporal jurisdictional capacity, see Mouliérac-Lamoureux, *Le Comtat Pontifical*, 38–39.

39 David, *L'organisation administrative*, 278–85. Evidence for appeals will be discussed in Chapter 4.

40 This will be explained further in Chapter 1.

criminal court. In the city of Carpentras, sergeants (*officiares minores*) who were charged with keeping public order and maintaining the security of the citizens were instructed to be vigilant and report crimes. While they could not execute an arrest or seizure of goods by their own office, they could execute such orders if designated to do so by a secular authority or the officiality.[41] Individuals also could report crimes to either temporal or spiritual functionaries, who, in turn, might refer the information or make arrests based upon these reports. By his office, the "vicar and official," who ran the diocesan court in the bishop's name and acted as its primary judge, also could order the arrest of offenders and bring information to the court directly. The diocese lacked competing abbatial jurisdictions and local ecclesiastical authorities (priors, rectors and archdeacons) were keen to refer matters to the bishop's official in a timely manner (as examples illustrate later). The highest administrators of the Comtat, too, were content to relegate routine and petty cases to the bishop's competency, one which conformed to canon law and was well-defined by the 15th century.

According to the only extant criminal records, covering the years 1487 and 1488 (and the civil records for 1486 and 1487), the intrusion of Comtadine officials was atypical. Conflicts most commonly transpired between the spiritual courts and local civic officials over offenses that involved notorious acts of violence, theft, or fraud. There were, however, instances in which a judge-major or other secular authority became involved: these included criminal cases involving mixed clerical and lay offenders, offenses that transpired in multiple civic jurisdictions, and civil cases handling large, complicated inheritances. In civil cases in which the rector or a judge-major did play a documented role, it was usually as a judge or arbitrator commissioned for the task by the ecclesiastical judge. But these other authorities also played a less formal role in facilitating peace accords. For instance, in the middle of the proceedings of one case concerning a debt for a sale, litigants presented letters from the rector indicating that he was helping the two parties reach an agreement, but no arbitration had been scheduled by the ecclesiastical court.[42] Any agreement, however, neither led to peace, nor to further involvement by the rector, and the case resumed in the church court.

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41 J. Girard, "Une Ordonnance du Cardinal de Foix sur administration de la justice a Carpentras et dans le Comté Venaissin (22 Mars 1446)," *Annales D'Avignon et du Comtat Venaissin* vol. 1, (eds.) H. Chobaut et al. (Paris and Avignon: Honoré Champion and J. Roumanille, 1912), 203.

42 *Archives départmentales de Vaucluse, B Rectorie* 3333, fol. 245v, 19 November 1487 (de Ducibus c. Truchoni).

Tight administrative integration, managed by the proctor fiscal, likely stemmed jurisdictional conflict. He, or the vice proctor fiscal, acted as a primary promoter of criminal cases in the officiality and sat with secular judges on the rector's papal council, which advised the rector when he sat as judge of his Supreme Court.[43] In his role as an independent agent for the Comtat, the proctor fiscal helped decide whether or not denunciations made to him, the rector, or judges-major were viable and to what court they should be addressed; complaints addressed to the rector or vice-legate could also be referred to him.[44] As a public officer, he could initiate first-instance criminal cases and then was responsible for the presentment of the accusations and pursuit of the cases.[45] He (or his substitute) did so often in the officiality, as the records show, but he exercised his charge in all the courts, excluding baronial courts.

In sum, the officiality was part of a well-integrated, centralized hierarchy and the great majority of the population could be subject its regulation. As it lacked competing lower jurisdictions (maintained elsewhere by abbots and archdeacons), local ecclesiastical authorities, including priors, rectors, archdeacons and parish priests, regularly referred matters to the bishop's official, and in a timely manner. The highest administrators of the Comtat, too, were content to relegate appropriate cases to the bishop's competency.

The Officiality and Its Notarial Records

The officiality at Carpentras met nearly every day except holy days. Audiences began in the morning and continued into the afternoon and some minor procedures were conducted in the evening. Usually, the necessary functionaries were able to attend, but on rare occasions entire days were lost when a judge or proctor fiscal was absent. Generally, it met indoors, though occasionally cases were heard elsewhere, typically in the plaza outdoors.[46] A group of proctors

43 David, *L'organisation administrative*, 43, 152, 251–53. The vice-legate of Avignon named the advocate procurator fiscal for life.

44 Ibid., 286–90.

45 Ibid., 124–25, 251–58.

46 Alternate locations were most common when audiences were temporarily delayed and re-scheduled, see: *Archives départmentales de Vaucluse, B Rectorie* 3334, fol. 104v, 28 November 1487 (Fisc. c. Daniel), where the court convened "*eadem die ante studio de Abrigiis*" (the latter was the notary of the civil court) and later, "*eadem die circa quintam horam in plano episcopalis coram de nostri vicario*." At the next audience they met "*coram Vernarelli in coqina*"; see fol. 106v, 1 December 1487. Note that, throughout, the idiosyncra-

appeared in court on a near-daily basis, offering their services, sometimes on the spot, for both criminal and civil litigants. A designated public notary, and a small crew of scribes and substitutes, were assigned to the task of recording each type of caseload heard by the court (one for civil and one for criminal cases). By the later Middle Ages, record-keeping was fairly standardized throughout Europe and included several major types of registers: books of warnings and censures, books of accusations, books of sentences, and books of quotidian court proceedings (*processus*).

At Carpentras, a register of daily proceedings, or *processus*, for 1487 and 1488 provides the only extant evidence for criminal cases.[47] Each year, the official designated a notary, along with a few scribes to aid him, to serve the court in criminal cases. In the daily proceedings, the appointed notary, or occasionally a substitute scribe, recorded who came to court, what statements they gave, what legal actions they took, and what court orders the judge made in court each day it met, and the notes remain in chronological order. The notary also included several types of legal actions performed before him outside the daily audiences held by the judge. In the margins, the notary made additions; often these noted absolutions and payments made to the court. Two un-paginated rubrics precede the summary of daily events and indicate the page on which the item can be located (one is organized alphabetically by the names of the accused and the other by procedures and censures). These rubrics allowed this one register to serve multiple archival functions. With them, the notary could track actions that had legal ramifications for the accused and/or generated fees to be claimed by the notary later.

This study also examines a civil register for 1486 and 1487, chosen not only because it is remarkably well-preserved, exceptionally rich, and includes a very large caseload, but also because it covers years that match most closely to both the surviving criminal register and the only extant notarial fee register for the

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sies in the Latin found in the registers (typical to the region, period, or the habits of the notaries) have been preserved. This includes the habitual dropping of the "*a*" in "*prae-*." When clarification is necessary to decipher the intended word, the classical Latin word is placed in brackets.

47 *Archives départmentales de Vaucluse, B Rectorie* 3334, hereafter ADV B 3334. It contains two years of court proceedings, beginning in January of 1487 and ending in December of 1488. The proceedings consume 176 paper folio. At Carpentras, the notaries serving the bishop's curia used separate books for different types of records (court proceedings, fees, and notarial acts).

officiality (1486).[48] Additionally, the same notaries who recorded the proceedings and fees of the spiritual court under consideration here also served the as the notaries for the bishop's curia and kept notarial records for him and others who sought their services. These registers also survive and are in fine condition for these years and allow a further clarification of the scope of, and divisions within, the bishop's curia.[49] Together, these sources can be used to paint a fuller picture of the mechanics and goals of diocesan justice, both in its criminal and civil fora.

A *processus* can prove somewhat intractable, but it is our best tool to understand the court's practices and legal culture (its participants, procedures, sanctions, uses, and regulatory concerns). It is well-suited for mining anecdotal evidence and for tracking judicial activities quantitatively. Usually, it is clear who came to court, how or why they ended up in court, and what judicial orders were requested and granted. From statements made by proctors, defendants, and witnesses, we can reconstruct the substance of the offenses and the narrative tactics deployed to describe them. While this type of record is notorious for its formulaic legal Latin phraseology, it is nevertheless ripe for analysis. These *processi* facilitate a deep understanding of diocesan justice in the Comtat, and as will be pursued further later, may be suggestive of the nature of local diocesan regulation in the region as a whole.

Magistri Elzear Raphael and Arnaud de Abrigi recorded the daily proceedings of the criminal and civil cases respectively for the officiality in the 1480s.[50]

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48 *Archives départmentales du Vaucluse, B Rectorie* 3333, hereafter ADV B 3333. Its 262 folio covers 1486 and 1487. While notarial books for civil cases become common by the 14th century here, as well as in Provence and Italy, most notarial work for medieval ecclesiastical courts is limited to 15th-century civil litigation. At Carpentras, extant records for the civil forum begin in 1427 (ADV B 3319), grow significantly denser in the 1480s, and continue into the 16th century but include caesuras of two to forty years. For France, one of the better-investigated regions after England, Donahue and Lefebvre-Teillard found that at least 53 of 159 medieval dioceses left records (many understudied), indicating a discovery rate of about one third. See: Charles Donahue, Jr. and Anne Lefebvre-Teillard (eds.), "France," in *The Records of the Medieval Ecclesiastical Courts, Part I: The Continent* (Berlin: Duncker and Humblot, 1989), 59. The fee book was discovered in ADV B 3335 at fol. 48v (the subsequent civil register): hereafter, ADV B 3335 (inserted). Two hundred twenty-two cases can be identified, though the writing is quite worn and the last page simply lists thirty-three cases without any space or attempt to add fees to them.

49 *Archives départmentales du Vaucluse, E 556* (*Raphaelis*) and *E 564* (*Albinhacii*).

50 See Lefebvre-Teillard, *Les officialités*, 35. Court notaries appear around the time that daily record-keeping becomes more common, at the end of the 14th century (Idem, 34–35). Chiffoleau describes similar functions allotted to the notaries of the various tribunals

Before the first audience of any given case, they often received the information and accusations necessary to open the case. They then tracked and recorded what happened in court in the *processi*: accusations made, statements given, documents presented, witnesses sworn in, interrogations conducted, abjurations witnessed, court-orders mandated, actions pursued, bails assigned, guarantors promised, and sentences meted out. Upon the judge's demand, the notaries drew up citations, warnings (of contumacy or excommunication), and various judicial orders; these judicial requests are included in the narrative of the *processi*, as well. The notaries also recorded acts completed outside the formal audiences of official, such as the designation of proctors, deposition of witnesses, or exchange of information with other authorities. Each notary also recorded their own presentations to the court after fulfilling court-mandated errands conducted elsewhere, such as when they delivered information or explained court orders to other authorities.[51] Occasionally, they recorded audiences temporarily commissioned to other judges or ecclesiastical authorities for arbitration.[52] Furthermore, they made copies of the proceedings or other court-related documents upon the demand of proctors. These notaries could turn to a commissioned staff of notaries (who also were available to act as proctors) to aid them or act as substitutes in their absence. They included Magistri Bartomieu Chaysi, Francisco Scutiferri and Siffrein Durand.[53] Many errands were delegated to a man named Nicolo, who sometimes read aloud information received by the court, delivered court documents, and recorded testimony.[54] Along with the notaries, a stable set of functionaries appeared in the court; many of them came on a near-daily basis and served multiple roles.

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of Avignon; see *Justice du papes*, 65. Note that the French refer to them as "*greffiers*" (though this does not extend into Carpentras) and the English as "court clerks."

51 These functions will be described throughout. For an example of one of the notaries' collection and delivery of letters outside court, see: ADV B 3334, fol. 60r, 27 June 1487 (Fisc. c. Saurin.

52 For examples from a criminal and civil case, see ADV B 3334, fol. 140v, 28 May 1487 (Fisc. Curia of Blandasio c. Jo. and Ja. Raynard) and ADV B 3333, fol. 136v, 10 March 1487 (de Casabona c. Brini).

53 ADV B 3334, fol. 107v–108r, 4 December 1488. They appear throughout the records in their capacity as notaries and as procurators.

54 Nicolo played roles throughout the cases and in both courts. For an example of his recitation of an accusation, see: ADV B 3334 fol. 128v, 10 May 1487 (Fisc. c. J. Guilhard). For an example of a statement about his delivery (and explanation) of a mandate and warning from the court, see: ADV B 3334, fol. 113r, 22 December 1487 (Fisc. c. de Petra). For his involvement in the reception of testimony, see: ADV B 3334, fol. 80v, 23 August 1487

Most prominent among them was the chief officer, the "official," who served under a general commission to judge ecclesiastical cases and received a salary for his service.[55] In his pursuit of justice, he could cite, arrest, imprison, fine, excommunicate, degrade, and sentence offenders or suspected offenders. Canon law stipulated that he be a free, sane, male cleric of the age of majority, and lacking any infamy. He acted as a proxy for the bishop at the latter's discretion, much as his counterpart did in France, where in practice the posting tended to be for life.[56] In 1486, 1487 and 1488, the canon and *bacalarius* Dominus Peire Raysson served the diocese under the title "vicar and official."[57] For criminal cases, two men were designated as Peire's substitutes or sitting judges (*locumtenentes*): the priest and *bacalarius* Dominus Guilhem Vernarelli, who had legal training and held a benefice attached to the cathedral church of Saint Siffrein of Carpentras, and Dominus Peire Ponciti, of Avignon.[58] Guilhem served as the sitting judge on a daily basis in criminal cases.[59] For civil cases, Guilhem and Dominus Johan Langeri, also attached to the cathedral, were assigned to act in the official's name when necessary. Johan was

(Fisc. c. Roys). For an example of his presentation of letters of fees levied by the court in a civil case, see ADV B 3333, fol. 158r, 13 May 1487 (de Marius c. Bourg).

55 For a discussion of officials, see: Fournier, *Les officialités*, 12–24; Pommeray, *L'officialité archidiaconale de Paris*, 86–97; Lefebvre-Teillard, *Les officialités*, 32–33.

56 Lefebvre-Teillard, *Les officialités*, 32–33. From the 13th century on, most dioceses had one official. Officials could be chosen from ecclesiastical dignitaries, or as at the archidiaconal court of Paris, from advocates of the ecclesiastical forum. At Lyons, one of the few exceptions, around 1370, a second official was created for a new "*cour d'excès*"; see Gonthier, *Délinquance, justice et société*, 28.

57 ADV B 3334, January 1487 (pre-pagination) and ADV B 3334, fol. 117r, December 1487. That Peire held the role of both vicar (general) and official may have been common in the Midi: see Lefebvre-Teillard, *Les officialités*, 32, not 35.

58 The role and commission of the sitting judge, or "*locumtenens*," by Raysonni was acknowledged yearly. See: ADV B 3334, fol. 101r–v, 19 January 1487 and ADV B 3334, fol. 117r, January 1488. The commission was extended (in duration and scope) at the end of 1487.

59 Guilhem Vernarelli personally appears throughout both registers. For an example in a civil matter, see: ADV B 3333, fol. 19v, 9 March 1487 (Martin c. Bernard), where he is referred as "*Dominus Guillius Vernarelli locumtenens*." When he was unavailable, he was not necessarily replaced by the other substitute, see: ADV B 3333, fol. 21r. 13 March 1486 (Merchandilhe c. de Brinelli): "*Dominus Guillius Vernarelli locumtenens absens Achardi continuavit p.m.*" Note that the term "*locumtenens*" was typical of the south and in other parts of France the term "*vice-gerens*" was employed, see Lefebvre-Teillard, *Les officialités*, 35, not, note 59. See, also, Fournier, who notes that this position, which soon becomes a permanent one, appears.

well-trained at law (indicated with the label "*jurisperitus*") and acted as a "*rector scolari*," directing local legal instruction.[60] Unlike criminal cases, the official almost always presided over civil cases and rarely did his substitute (Guilhem) replace him. Johan likely played a role of legal expert for the official, as jurists and advocates did elsewhere. While the official was independent of the rector of the Comtat, in cases involving high-value debts, complex testamentary issues or Comtat-wide crimes, he might consult the rector, who then was kept informed about the progress of the case or, in rare instances, become involved as an arbitrator or judge for part of the trial.[61] A handful of servants of the bishop also were assigned to the officiality for a variety of duties, typically appearing at the first audience to relay information (of offenses and arrests made) or to request judicial orders.[62]

In the officiality's criminal cases, Dominus Bertan Rostaing, the proctor fiscal of the Comtat, fulfilled a role similar to that of a modern U.S. district attorney: he held a license at law, served the public interest, and presented the court's side of the case.[63] In the records, Bertan was referred to as an "*advocatus fiscalis*," "*proctor episcopalis*," and "*proctor fiscalis*." Proctors fiscal

60 ADV B 3334, fol. 117r, December 1487. Johan Langeri was not mentioned by name as a sitting judge in the records, a circumstance which supports the notion that his role was advisory. His position as rector and role as teacher is stated in the records of civil cases pursued by him, several of them suits for payment for his educational services, see: ADV B 3333, fols. 9v, 11 February (Langeri c. Perussi) and 254r, 5 December 1487 (Langeri c. de Bourg).

61 For an example of his involvement in arbitrating a testamentary affair, as agreed upon by the litigants, see: ADV B 3333, fol. 136v, 10 March 1487 (de Casabona c. Brini).

62 These included Salvator Arnaud, Johan Molhati, Antoine Merchandilhe, Ymbert Boni, who were formally acknowledged in the introduction to the second year of the criminal records. See: ADV B 3334, fol. 117r. For example, these men often came to inform the court of arrests, and then, they, or a proctor of the officiality, presented accusations; they facilitated the initiation of the legal process, placing information and individuals before the scrutiny of the court. See, for example: fol. 96v, 26 October 1487 (Fisc. c. Barber): "*Comparavit Arnaudi eundem Richardum infra domum episcopi arrestavisse sub pena excomunicationis*." Arnaud de Abrigis, vice-proctor fiscal, followed with the presentation of the accusations to the court: "*Comparavit de Abrigiis imponens eidem delato quod hodie . . . accessit ad lupanari ibi . . . et compertus ibi per Johannem Tribuleti . . . ipsum Tribuleti verbanit per plures inurias dixit*."

63 The other roles of the advocate proctor fiscal role is described above. His role as the bishop's proctor or promoter in *ex officio* cases represented a natural extension of his service as defender of justice, a function associated with this position since the end of the 13th-century.

were common in ecclesiastical courts south of the Loire and in Italy, and typically fulfilled the function of "promoters," as Bertan did at Carpentras.[64] They pursued crimes, joined complaints, presented information, and engaged in the same procedural moves that all proctors were obliged to for their clients. Bertan also served as a proctor for litigants in civil cases. He appeared in court most days, but when busy, he designated substitutes, typically the vice proctor fiscal, or the court notary for civil cases, Magister Arnaud de Abrigi, or the bishop's own proctors, Magistri Peire Bochardi and Francisco Scutiferri.[65]

A *clavaire* acted as a treasurer and proctor for the bishop and oversaw the court's finances, the collection of its fees, the transfer of prisoners, and also acted as a promoter in cases.[66] The *clavaire*, Dionys de Stagneri, might involve himself in the pursuit of criminal cases, but typically only in their initiation: in subsequent audiences, other men were commissioned to pursue the cases further, including the notary de Abrigi.[67] He worked with the general proctor of the bishop, Ludovic Mussi, particularly when payments were involved.[68]

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64 In northern France, one or two "*procurator curiae*" functioned as promoter in ecclesiastical courts. Lefebvre-Teillard, *Les officialités*, 34, note 49 (on the title). Fournier, *Les officialités*, 25. For example of the proctor fiscal's work in action, see ADV B 3334, fol. 161v, 6 October 1488 (Fisc. c. Asson). For an example reference to his role as the bishops' procurator, see ADV B 3333, fol. 208r, 10 September 1487 (*Clavaire* c. Langeri).

65 For Arnaud de Abrigi's title, see the entry marking the second year of the Manual of Criminal Case. See: ADV B 3334, fol. 117r, January 1488. Case entries use this title, too. The others are noted as scribes of the court in the entries to the Manual of Civil Cases, but act as procurators, too. See: ADV B 3333 fols. 1r, January 1486 and 113r, January 1487. For Francisco Scutifferi, see the example in ADV B 3334, fol. 148r, 16 July 1488 (Fisc. c. Baddeti).

66 Their appearances were numerous, but a few examples indicate their functional scope. For an example of Ludovic Mussi's role collecting fines owed to the court as part of a condemnations, see: ADV B 3334, fol. 129r, 10 March 1488 (Fisc. c. Millon): "*Constitutus honorabile vir dominus Ludovicus Mussi procurator generalis domi episcopalis confessus sit habuisse unum scutum pro quo eum quictavit de quadam condampnatione* [sic]." For an example of his role in presenting accusations, see: ADV B 33334, fol. 169v, 13 November 1488. For an example of his role as procurator in this curia and his presentation of witnesses, see ADV B 3334, fol. 43v, 18 May 1487 (Fisc. c. C. Marcelli).

67 For example, see: ADV B 3333, fol. 211r, 17 September (*Clavaire* c. Aynard) and fol. 2r, 3 January 1486 (*Clavaire* c. Parause).

68 ADV B 3334, fol. 107v–108r, 4 December 1488. For examples of his role, see ADV B 3334 fol. 33v, 2 April 1487 (Fisc. c. Arbori) and fol. 171r, 24 November 1488 (Fisc. c. Boller). Sometimes the cases he pursued were simply in the name of the court, sometimes they are explicitly *ex promoto* cases, as in fol. 160r, 9 September 1488 (*Clavaire* c. Avinani). The *clavaires* were created in the 14th to serve the rector (along with a treasurer) after he

Though both played vital roles in criminal cases and the collection of fees, Dionys also represented the bishop in civil suits over ecclesiastical rents and properties.

A small group of proctors came regularly to serve the interests of criminal and civil litigants.[69] Proctors, who acted as proxies and legal counselors, became common in civil cases heard in church courts by the 16th century at the latest.[70] In 15th-century Carpentras, all litigants employed these legal representatives. At the beginning of the year, in his register, the notary listed a set of proctors who the court commissioned and formally recognized to serve in this capacity; presumably this facilitated last-minute assignments of proctors to litigants.[71] A number of them were also notaries and well-versed in legal norms: they likely would have had experience serving as legal scribes and an acquaintance with legal formularies.[72] While defendants and plaintiffs sometimes specified one individual to act as a proctor (a friend, family member or local professional), most chose to commission the entire group of proctors recognized by the officiality; the notaries witnessed and recorded the commissions – which could occur anywhere – in their daily records.[73] All

established himself at Carpentras in order to administer the Comtat; see Dubled, *Carpentras*, 41. Chiffoleau discusses the role of *clavaires* in the seigneurial courts of the pope; see, *Justices du pape*, 65. For examples of similar roles played by *clavaires* in secular courts at Marseille, see Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Ithaca: Cornell University Press, 2003), 98–99 and 142.

69 This fluidity of roles was likely typical: Chiffoleau found the same for 14th-century Avignon (*Justices du Pape*, 64) and certainly, a professional seeking a decent income would not limit oneself to one competency or jurisdiction.

70 Lefebvre-Teillard, *Les officialités*, 40.

71 Dominus Bertran Rostaing (advocate and proctor fiscal), Balthesar Achard, Johan de Pomerolio, Peire Cristofori, Anthoni Serre, Rostaing de Cheylussio. The notaries listed also acted as procurators. The list of proctors was not exhaustive.

72 The use of notaries as proctors was also found at the 14th-century consistory court of bishop of Ely; see, Brundage, "The Cambridge Faculty of Canon Law," in *The Profession and Practice of Medieval Canon Law*, Variorum Collected Studies Series CS797 (Aldershot, Hampshire: Ashgate, 2005; reprint, *Medieval Cambridge: Essays on the Pre-Reformation University*, (ed.) Patrick Zutski (Woodbridge, Suffolk and Rochester, NY: Boydell Press, 1993), 35 (page citation is to the reprint edition).

73 This practice sometimes led to debate in court: the court's procurator could challenge whether a proctor who claimed to speak for the accused had been previously legally commissioned (engaged) and then request the defendant be charged with contumacy, but the official generally rejected the request and affirmed the proctor.

judges, proctors, and advocates should have been required to obtain a *dominus litis*, and to swear an oath to serve their clients as best they could, maintain proper professional conduct, avoid unnecessary delays, and reject cases without merit.[74] At Carpentras, their backgrounds varied: they included professionals like public notaries, advocates, and doctors of law, as well as other clerics and laypeople.[75]

Behind the scenes and occasionally at audiences, other authorities, aides, and witnesses were in attendance. Ecclesiastical disciplinary authorities (archdeacons, rectors, priors, etc.) submitted information, promoted cases, and denounced offenders.[76] And in any given period, one would encounter a steady stream of public notaries from across the diocese who provided instruments, confirmed debts, and authenticated documents on behalf of litigants. Serving a more ad hoc role, a motley group of accessible men (ranging from cooks to clerics) were easily collected to act as court witnesses for oaths and the designation of proctors.[77] The notary or his substitute, of course, was present recording the actions taken in the cases heard.

The Criminal Caseload at Carpentras

As noted above, jurisdiction was determined by reason of the person involved, the offense committed, and/or the location or target of the offense.

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74 Brundage, "The Ethics of the Legal Profession: Medieval Canonists and Their Clients," in *The Profession and Practice of Medieval Canon Law* (reprint, *The Jurist* 33 (1973)), 244–48 (page citations are to the reprint edition); Helmholz, *Canon Law*, 152–3; Lefebvre-Teillard, *Les officialités*, 40–14.

75 Johan de Pomelerio was a doctor at law and Rostaing de Cheylussio was an advocate.

76 For instance, Dominus Antonio Morin, canon of the Church of Carpentras, rector of Saint Mary of Ansouis and curate of the church at Gigondas, formally denounced individuals before the court. See ADV B 3334, 57r, 22 June 1487: "*Denunciatio facta per venerabilem virum dominum Antonium Morini canonicum Carpentoracti.*"

77 The assignment of procurators occurred outside the curia in a variety of locations, from the bishop's kitchens (a popular location) to the homes of litigants. For example, see ADV B 3334, fol. 148r, 15 July 1488: *Procuratus pro domo episcopali in favore Johannis Cavalleri . . . Ratifficando* [sic] *et aprobando . . . per Dionisum de Stagneriis clavarium domi episcopalis facta de Johanne Cavalleri ac omni et singula per ipsum gesta in curia episcopalis de novo constituit procuratum fiscalis . . . In loco de Villis . . . Bertrandus Arnaudi . . . ad prosequendum omnes causas civiles et criminales . . . Actum in coquina domus episcopalis, tempore Simone Caponi subdiacono et Ludovico cusinerio domus episcopalis. Et me Elziaro Raphaelis.*"

Ecclesiastical courts claimed an exclusive jurisdiction over crimes involving a cleric by reason of his or her status alone.[78] At Carpentras, their crimes typically included offenses that were secular in nature (assaults, thefts, and fraud), salvational (heterodox beliefs or illicit sexual acts) and those particular to their status (non-residence, failure to perform their spiritual duties, or disobedience). By canon law, laypersons who attacked clerics were subject to automatic excommunication (*latae sententiae*) and obliged to appear at an ecclesiastical tribunal. In general terms, laypeople also faced justice if they violated marital or religious rules, including behavior inconsistent with orthodox doctrine and the salvation of the soul. Additionally, laypersons could be accused in a criminal case if their actions occurred within, or damaged, church property, which was construed here as a sacrilegious act.

The criminal caseload suggests the court's functional jurisdiction and is a good measure of its disciplinary foci and what was considered a "criminal" act; though as will be described in Chapter One, what made a case "criminal" primarily were the procedures it followed. Measuring the caseload numerically from a *processus* is challenging and means making choices. Here, the total number and types of accusations made against each individual were identified to the extent the source allowed. Each case could contain multiple accusations against individuals, or on the other hand, lack any identifiable accusation. In some cases, the notary may not have needed to record accusations here as he had at his disposal (non-extant) loose titles of inquisition and libels. He also might neglect to mention the specific accusations because the case began in the previous year, was being renewed after the court had dropped it temporarily, or the accused re-offended.[79]

What stands out among the identifiable accusations are the high numbers of assaults, and secondly, offenses particular to clerics, specifically disobedience, and lax or illicit sexual behavior. From January 1487 through December 1488, one hundred and eight-five cases were initiated or in motion at the officiality of Carpentras, in which one hundred twenty-seven accusations could

78 Fournier, *Les officialités*, 64–82; Helmholz, *Classical Canon Law*, 116–23; Lefebvre-Teillard, *Les officialités*, 87–91; and Pommeray, *L'officialité de Paris*, 208.

79 This table identifies the number and type of accusation against each individual cited in the register. For seventy-six of the one-hundred forty-six individuals who faced the court, the notarial book contains no identifiable accusations; the court cited twenty-two of these individuals multiple times, possibly because they defied a court order, broke an oath to the court, or re-offended. Additionally, eight persons came only to assert their clerical privilege and guard themselves against temporal legal actions, but the court never charged them with an offense.

be identified against one hundred and forty-six individuals.[80] Additionally, the court heard seventeen complaints against the legal officials of the five major towns for violating clerical privilege (eight of these were initiated by men not currently facing any accusation by the court) and two demands for unpaid legal fees (see Table 1). Most of their misbehavior occurred in the major towns of the diocese – Carpentras, Mazan, Mormoiron, Gigondas, and Caromb – and involved physical and verbal attacks. Other common accusations include clerical disobedience, sexual misbehavior, and theft: in all three categories, groups of clerics (or groups dominated by them) figure prominently among purported offenders. In fact, clerics comprise about sixty-one percent of those facing the court. Recidivism was not uncommon: the court cited twenty-four men two or more times in response to new offenses, re-aggravation of offenses, or in a few instances, for renewals of the accusations that had been dropped by the court temporarily. Many recidivists were entangled in multiple protracted cases, and often were charged as part of a group of offenders, suggesting that the court aggressively pursued those perceived to be troublemakers or cohorts of troublemaking groups. For seventy-six individuals, the notary recorded no accusations here, though their cases remain useful for understanding procedure.

TABLE 1 *Identifiable accusations and complaints in the criminal records of the diocesan court of Carpentras, 1487 and 1488*

Category	**(No. of Accusations and Complaints)**	**% of Substantive Accusations**	**% of Identifiable Accusations & Complaints**
Substantive	(127)		87
Attacks	(52)	41	
Physical Attack (only)	(30)		
Verbal Attack (only)	(12)		
Verbal & Physical Attack	(8)		
Physical Threat	(2)		
Religious	(34)	27	
Spiritual Rebellion	(14)		

80 The substance of the accusations was identified in 69 percent of the cases, but for only 58 percent of the individuals cited.

Category	(No. of Accusations and Complaints)	% of Substantive Accusations	% of Identifiable Accusations & Complaints
Breaking into Church	(8)		
Improper Communion	(5)		
Neglect of Sacedotal Duties	(3)		
Blasphemy	(2)		
Selling Goods on Sunday	(1)		
Spreading False Belief	(1)		
Theft or Economic Fraud	(17)	13	
Sexual	(16)	13	
Inappropriate (Clergy)	(9)		
Clandestine Marriage	(2)		
Concubinage	(2)		
Bigamy	(1)		
Public Fornication	(1)		
Rape	(1)		
Legal (Fraud, Misconduct)	(5)	4	
Lèse-Majesté	(1)	<1	
Medical Malpractice	(1)	<1	
Unpaid Census	(1)		
Procedural	(19)		13
Clerical Privilege	(17)		
Unpaid Legal Expenses	(2)		
Total	(146)		

SOURCE: ADV B 3334.

The small numbers of complaints concerning clerical residency and lay sexual behavior relative to other dioceses might be explained by the lack of any visitations by the bishop in this period, a process which tended to elicit such complaints. Alternatively, minor sexual offenses may have been dealt with by archdeacons, albeit less formally than was found by A. Daniel Frankforter for England.[81] No archidiaconal court has ever been identified for Carpentras and we might doubt they existed given that archdeacons brought cases to this court. Possibly, clerics attempted to deal with minor offenses informally or through the confessional and, when necessary or grave, referred offenders to the episcopal court. Alternatively, such cases may have fallen under the purview of secular courts.

As there are no identifiable accusations against seventy-six individuals in the records at Carpentras, we must treat these relative proportions with caution. The *processus* is not a catalogue of criminal actions. However, similarities to neighboring regions strengthen the sense that the part resembles the whole, as will be discussed in the next section. This work will focus on Carpentras' criminal *processus*, exploiting the opportunity to explore the detailed procedural contents and rich narratives of a type of record that is rarely extant. Given that criminal competency and prosecution varied wildly in different church courts, such a study helps us expand our comparative understanding of ecclesiastical criminal justice and, to some extent, the society it regulated. The civil cases are terser on the whole: the richest, most detailed cases involved debt litigation which dominated the caseload and will receive extensive treatment.

The Civil Caseload at Carpentras

A church court's civil competency could be quite broad and adjudicate a wide range of both punitive (*quod penam*) and damages cases. For laymen, punitive cases involved disputes relating to marriage (including adultery, impediments, bigamy) and for clerics, cases relating to their status (primarily suspension and degradation). As part of its effort to regulate family affairs, these courts also managed conflicts over wills, testaments, probate, and wardships. Damages cases widely varied. Contract disputes fell under canonical competency because those who defaulted broke sworn oaths that were underwritten by their souls, whether they engaged in a debt exchange, a sale (of goods or

81 A. Daniel Frankforter suggests that this was the case in England; see "The Reformation and the Register: Episcopal Administration of Parishes in Late Medieval England," *Catholic Historical Review* 63:2 (1977), 211–13.

property), a rental agreement, or contracted for labor or services. Attending to the Church's financial interests, the clergy were entitled to pursue cases here over unpaid tithes, unpaid rent, and disputed bequests.

Litigation over debts and contracts (for labor, legal fees, and sales) dominate the register. The court heard a smaller number of disputes over inheritances, property ownership, and injury claims. The substance of about 75 percent of the accusations could be identified in the civil records. See Table 2. Most of them concerned debt litigation (about ¾). Suits over services (instruction or physical labor) comprise 7 percent of the total, while a variety of cases, each totaling 5 percent or less, make up the remainder: they included disputes over legal expenses, testaments, rent, property, and injuries. Punitive causes, while very common in northern European records, were exceedingly rare here. These findings are unsurprising, with the glaring exception of civil litigation over marriage formation: one clandestine marriage case was identified but it was treated as a criminal matter.[82]

TABLE 2 *Civil cases heard in the Diocesan Court of Carpentras, 1486 and 1487*

Category	**(No. of Accusations)**	**% of Identifiable Accusations**	**% of All Accusations**
Debt (monies, goods, sales)	(240)	74	55
Loans	(220)		
Sales	(18)		
Sales and Loans	(2)		
Debt for Services Rendered	(22)	7	5
Misc. Labor	(8)		
Legal Services	(6)		
Scholarly Instruction	(4)		
Medical	(2)		
Wet-nursing	(1)		
Construction	(1)		
Legal Expenses	(16)	5	4
Census Payment	(14)	4	2
Inheritance	(12)	4	3

82 ADV B 3334 fol. 131v, 4 April 1488 (Fisc. c. Peire and Bitrona Laudon).

TABLE 2 *Civil cases heard in the Diocesan Court of Carpentras, 1486 and 1487* (cont.)

Category	(No. of Accusations)	% of Identifiable Accusations	% of All Accusations
Possessory	(10)	3	2
Property Damage	(3)	1	1
Rent/Lease	(2)	1	<1
Contesting Sentence for Debt	(1)	<1	<1
Debt Incurred for Surety Payment	(1)	<1	<1
Debt Incurred for Violence	(1)	<1	<1
Gambling Debt	(1)	<1	<1
Unknown	(110)		25
Total	(433)		100

SOURCE: ADV B 3333.

The Caseload in Broader Context

The caseload best resembles those found in the ecclesiastical courts of Tuscany and southern France, and in some ways, those found in many case studies of these courts, though this court's inattention to lay sexual conduct differs strikingly from most in northern France and England.[83] Equally striking is the large number of debt suits, adjudication over which increasingly fell to civic

83 This trend will be illustrated further below and in later chapters, but for two key examples illustrating findings for Italy and France, see Brucker, "Ecclesiastical Courts," 245–48 and Lefebvre-Teillard, *Les officialités*, 87–88. Marital litigation comprised the largest caseload at the archbishop's consistory court of York in the 14th century, followed by cases over ecclesiastical finances and benefices. See Donahue, "Roman Canon Law in the Medieval English Church," 257–60; Donahue, "Roman Canon Law in the Medieval English Church: Stubbs vs. Maitland Re-Examined after 75 Years in the Light of Some Records from the Church Courts," *Michigan Law Review* 72:4 (1974), 657–60; Wunderli, *London Church Courts*, 81–104.

and royal courts in northern France and England.[84] Notable, too, is the total absence of civil suits (and rarity of criminal ones) over marriage. Lefebvre-Teillard concludes that cases over marriage and ecclesiastical finances predominated in northern France, as they did in England. But she also notes that cases throughout France did involve clerical conduct, sacrilege, violence, and debt.[85] The caseload at Carpentras may suggest a continuation of the bishop's earlier jurisdictional scope and its limitations. Jan Bulman, who studied the bishop's mixed spiritual and seigneurial court of 13th-century Mende, in southern France, also found that, after contract litigation, assaults were the most common accusation, and very few cases addressed illicit sexual behavior or a cleric's failure to attend to his office.[86]

In general, acts of violence, theft, and illicit sex were common criminal allegations in 15th-century ecclesiastical courts; all three ranked high among the accusations faced by the clergy in particular, though the caseload on sexual offenses appears to have varied greatly by time and place. Neveux found that clerics were most commonly accused of theft, assault, and homicide at Bayeux.[87] From ecclesiastical records from Marseille (1398–1405), Daniel L. Smail also concludes that accusations primarily concerned criminous clerks accused of assaults and homicides, though inheritance and family-related issues were heard occasionally.[88] Pommeray notes that the archidiaconal court of Paris most often accused clerics of acts of violence.[89] In the communal court and the *court des excès* at Lyons, Gonthier finds that clerics were accused of thefts and fraud first and foremost, then sex, followed by fighting, failure to perform sacerdotal duties, and finally disobedience, rebellion and a variety of political crimes, though she adds that financial records from 1344 and 1405 indicate that clerics paid fines much more often for sexual offenses – most commonly for concubinage among the higher clergy – than any other type of accusation.[90] The rates of accusations for sexual offenses may have been especially high where pastoral visitations were frequent, as in the officiality of Grenoble,

84 Wunderli summarizes this downward trend in England; see: *London Church Courts*, 19–23. Brucker, "Ecclesiastical Courts," 247–57. The decline, while increasing severe, varied in its timing in England: for example, Chichester retained a generally active civil sphere – including debt litigation – until the 1530s (Lander, *Church Courts and the Reformation*, 228).

85 Lefevbre-Teillard, *Les officialités*, 107–28.

86 Bulman, *The Court Book of Mende*, 53–55.

87 Neveux, "Les marginaux et le clergé," 30.

88 Smail, *Consumption of Justice*, 41.

89 Pommeray, *L'officialité archdiaconale de Paris*, 223–25.

90 Gonthier, *Délinquance, justice et société*, 159–69.

studied by Chomel.[91] Andrew Finch illustrates that in the *ex officio* cases heard in the northern French officiality of Cerisy, fornication was the most common accusation, followed by assaults and fights, and then adultery.[92] However, he finds high rates of citations for sexual offenses in 1314–46 – a time of frequent visitations – while in later runs of the records assaults or blasphemy predominated. It is possible that this shift reflects the lack of visitations in the later 14th and 15th centuries, which were no longer recorded after 1377. Sexual offenses committed by the laity routinely predominated in English church courts as Helmholz, Brian Woodcock, and Richard Wunderli have noted, though there were significant numbers of accusations against the clergy for their failures to perform their ministerial duties and for their sexual and drinking habits.[93]

A synthetic comparative analysis of European ecclesiastical courts remains elusive, and for good reason few have attempted it, though this study strives to place its findings within the whole as best as possible. More comparison will follow later in this work. The challenge arises in part from the variations in the sources (in type and content) and the specific interests or goals of scholars. Excellent comparative studies of marital cases exist of course, but other areas of justice are harder to typify, quantify, and compare. In their efforts to categorize their findings in ways that best fit their sources, region and/or period, scholars have created different typologies that are not always amenable to easy comparison. Others focus on one type of offense or juridical problem. Some studies examine only the criminal or the civil suits. How each diocese divided the two spheres (and how the two evolved) could vary by place and time, and this complicates things as well.

Comparison is a daunting project, too, because record-keeping varied by time, place, and tradition. Gaps, accidents, or moments of exceptional drives against crimes shaped what was prosecuted and occasionally how it was prosecuted. The daily records of the bishop's court, like the one studied here,

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91 Chomel, "L'activité disciplinaire," 49–59.

92 Finch, "Disciplining the Laity in Medieval Normandy," 168–69.

93 Wunderli illustrates that sexual offenses (adultery, fornication and prostitution) alleged to the laity dominated the records of the commissary court of 15th-century London, a court below the bishop's consistory court, over which his official presided (*London Church Courts*, 81–102). Woodcock, *Ecclesiastical Courts of Canterbury*, 79–82. Though causes pertaining to lay sexual behavior also formed the majority in dioceses like those of Canterbury, Helmholz's examination of English act books indicates that most *ex officio* cases against the *clergy specifically* were for failures to fulfill their pastoral obligations (ministerial duties, financial oversight), poor conduct (sex, drunkenness, sodomy, simony), and residency issues (multiple benefices, non-residence) ["Discipline of the Clergy," 192–97].

facilitate limited and cautious quantitative analysis. In some regions, records indicate the pursuit or excommunication of criminals but not their offenses. In others, sentences survive, but little else. For example, Allison McHardy found that English bishops issued frequent commissions to pursue clerics suspected of serious crimes and these suggest a substantial but unknowable number of offenders: the bishop's registers rarely record the indictments themselves or even the compurgations made by clerics in response to them.[94]

Nevertheless, comparison remains fruitful and this study will place its findings against those for other ecclesiastical courts, as well as secular courts that possessed competency over similar cases (particularly those concerning assaults and debts) and shared significant procedural challenges and disciplinary norms. This study of Carpentras illustrates the officiality's caseload, analyzes the nature of its justice, and critically explores the narratives contained in its records. Where numbers are helpful, they are included. Where narratives help reveal the tactics of defendants and the judicial philosophy or norms of the court, they will be the focus.

Justice at Carpentras

This bishop's court maintained a locally relevant judicial space, but one that was not particularly repressive, nor apparently geared to be so. As it confronted parties accused of crimes, sins, and contractual default, its role was to track, register, record, and validate information and documents, to inquire, instruct, warn, cajole, and abjure defendants, and to mediate among disputants. While the judges applied their potential sanctions sparingly and worked within a limited competency, they and the authorities who aided in the process were able to define to the community the boundaries for acceptable behavior, address the most egregious offences, and encourage debt dispute settlements. The court adopted later medieval canon law's innovative features that eased the rules for opening criminal cases, but maintained most of the safeguards allowed to defendants by classical canon law.[95] The judges counseled the accused as often as they punished them and facilitated confession and mediation more often than they ruled arbitrarily or summarily. Rarely did judges mete out punishment for minor legal infractions, insist that the guilty pay heavy fines or face

94 Allison K. McHardy, "Church Courts and Criminous Clerks in the Later Middle Ages," in *Medieval Ecclesiastical Studies in Honour of Dorothy M. Owen*, (eds.) M.J. Franklin and Christopher Harper-Bill (Woodbridge, Suffolk: Boydell Press, 1995), 167–68.

95 See Chapter 1.

harsh sentences anyone to jail. Ultimately, the judges' range of punitive tools and their ability to enforce more substantial penalties was limited, and this likely informed their approach to justice, as well as that of the proctors. And in most ways the actions of all the court's functionaries supported and scrupulously followed the full procedures developed by canon law.

Chapters One and Four reconstruct the procedural norms in the criminal and civil forum respectively, illustrating how people first confronted the court, how cases were proven, and what services were provided by the court, including the registration of evidence and the mediation by the judges. This process often involved cooperation from a variety of ecclesiastical and secular officials and from litigants themselves. For disciplinary issues like those involving sex, few laypeople or ecclesiastical and secular authorities presented information to the court, and hence, the court was able to initiate or effectively pursue such cases less often. Throughout the cases, the court's functionaries protected the legal rights (and perhaps dignity) of all defendants fastidiously. Its protection of the clergy, specifically, extended from guarding them from secular prosecution to safeguarding their rights as defendants in their courtroom. Particularly noticeable are the regular use of proctors by criminal defendants, the allowance of delays, the vigorous encouragement of defenses, and the judges' choice not to resort to summary rule. Such rights, though, extended to laypeople and Jews, as illustrated strongly in the civil records.

In criminal proceedings, the court's functionaries created an inquisitorial, confessional, and disciplinary space, a space that fit the mandates – and reflected the limitations – of a church court. The court tracked criminals and their offenses and put them on notice, so to speak. The process publicized the fact that the accused was under scrutiny, brought attention to growing problems, tested social networks, and created a space for redress. It suggested to the community who was worthy of reproach, making examples of a small but notable group. And it did so in response to events in places where the need, and impact, was potentially the greatest: the capital and its closely neighboring towns. By focusing on dealing with clerical offenders and protecting their privileges, the court reaffirmed its competency and respected the county's well-established and well-integrated judicial structure.

The court's most aggressive and tenacious attention settled upon notorious acts of public violence and scandal, particularly those which were part of escalating disputes that could destabilize a tenuous public peace or jeopardize the authority and respect of clerical authorities. But it was relatively lax about pursuing other offenses, and as far as the records can show, few such cases were initiated or carefully investigated, unless persistent recidivism was demonstrated. Its disciplinary gaze settled upon groups of clerical malefactors

engaged in fights, feuds, insubordination, anti-Jewish activities and sexual misbehavior. When the malfeasance was an isolated incident, and especially if it involved private sexual sins, the court often failed to pursue the case vigorously or the judge simply abjured the defendants.

As will be discussed in Chapter Two, which focuses on verbal and physical assaults, the court's proctors drew particular attention to assailants who, by their deeds and words, were deemed public nuisances and drove others to violence. The court appeared to categorize acts of violence in ways similar to that of secular courts, relying on a mapping or hierarchy of violence that resembles those codified by the "tariff justice" system of fines so common to late medieval Europe.[96] Case records contain more than the mere "facts" of the crimes – the parties involved, the location, and the nature of the injury – that were used to determine the incidents' severity and the responses they warranted. In the process of clarifying the events and eliciting confessions by the defendants, the court opened a curious and potentially rich narrative space as it ferreted out provocation and intent.

Defendants and their proctors and the proctor fiscal and judge alike routinely and carefully reconstructed or elicited tales of wounded honor whether we look at the assault cases in Chapter Two or the acts of clerical disobedience discussed in Chapter Three. These tales – ones that typically transformed the defendant into the injured party and mitigated the severity of the offenses – demonstrate a firm attachment of clerics to an "honor culture" they apparently shared with laypeople. Certainly, these stories were important to establish intention and culpability, and provided information for potential appeals, but they are surprising, if still understandable, defenses in a spiritual court given the Church's claims to an alternate moral code. Like many judges, the sitting judge scrutinized individuals, not just acts. And this meant weighing defenses carefully, and in some cases, interrogating the accused directly in court. In these interrogations, the judge not only ferreted out information but also instructed sinners, probed their intentions, gauged their understanding of their misdeeds, and admonished them – all actions suited to his role as both judge and priest. The judge typically conducted these in-court interrogations as preludes to abjuration and most commonly resorted to them when he confronted those accused of sexual misdeeds and clerical disobedience.

Chapter Three explores the nature and confrontation of these sexual sins, as well as other acts of malfeasance that might imperil the soul or reflect the failure of the clergy to live up to their particular obligations of obedience and

96 For a summary see: Trevor Dean *Crime in Medieval Europe, 1200–1500* (London: Longman, 2001), 130–34. Chapters 2 and 5 will explore this in more details and further studies.

service. Examination of them reveals the different expectations for clergy in lower and major orders. At the conclusion of many of these cases, the accused, who often admitted their sins early in the process, swore to abjure similar behavior in the future. This approach may signal a differentiation of violent *crimes* and sexual *sins*. Before resorting to fines or disciplinary tools like excommunication, the judge admonished the sinner, as was encouraged in the Gospel of Matthew 18: 15–22, which counseled all to rebuke verbally the sinner thrice before punishment.

In its adjudication of civil litigation, the court created a forum for inquiry and confession, too, but primarily served to register and mediate contract disputes. Chapter Four describes and analyzes the procedures and adjudication of these cases, and focuses on the most common litigation here, and one that was increasing circumscribed in many northern European church courts, debt suits. Litigants were diverse, including Jews and Christians, clergy and laypeople, women and men, wealthy and not. For Jewish lenders and those with weak evidence to support their loans, this court may have been particularly valuable, as will be explained. Here, too, punishing the delinquent party was not the main goal of the court, whatever the type of case. Much of the court's business involved recording, recognizing and/or authenticating evidence, providing legal instruments, and mediating disputes. These multivalent roles were typical of debt litigation in ecclesiastical and secular courts, though a more repressive approach had begun to predominate in the latter. The court also could secure expert witnesses and arbiters to help resolve the conflict. Again, a level of cooperation and action by the litigants was necessary to secure resolutions, particularly given that many cases lacked documentary evidence. In most cases, the official, who judged civil cases, exerted only light coercive pressures, typically ruled on the basis of confessions, and readily let cases drop should the parties wish to settle out of court – the most common conclusion to litigation.

Chapter Five considers exactly how the judges coerced and disciplined the accused (excommunication, arrests, jail-time, bail, and sentencing) and what we can learn about the officiality's relationship with other jurisdictions. The sitting criminal judge applied his censures carefully, eschewing the innovative arbitrary, summary processes, or many of the penitential or draconian punishments at his disposal. He was unlikely to imprison violent criminals during the trial; the official, who pronounced final rulings, appeared reluctant to use prison as a punishment. As nearly all accused criminals were allowed to secure their freedom from jail during the trial through guarantors and sureties, the process tested their social networks and allowed time and space for redress. Equally cautious with his spiritual tools, the criminal judge was

unlikely to resort to excommunication for a litigant's first instance of contumacy. Elements of the court's justice echoes that of the earlier years of the church courts, where private accusations drove the process, care was given to protect defendants and the court's scope was limited.

Due to procedural constraints and the court's particularly vigorous protection of defendants, criminal conviction and civil sentencing rates were low at Carpentras. Few were sentenced and those who were usually quit themselves of the court with a fine. Only one criminal faced a potential jail sentence and was handed over to a secular judge. Only a few debtors accepted the option of serving jail time (and only after admitting that they could not pay their debts). Simply bringing the accused before the court in order to settle disputes, curb future misbehavior, and sanction the worst violations satisfied it. At times, we even find the judge wearing the mantle of priest and engaging in a confessional mode, utilizing his softest corrective tools. But when misbehavior was escalating or feuds were involved, the court demonstrated some tenacity in arresting and detaining the accused, and in pursuing the cases until some resolution was reached, unlike other cases, which simply were dropped from the records. This was particularly true in its approach to anti-Jewish clerical gangs who jeopardized the fairly peaceable religious coexistence and the often-tense status quo that was recently renegotiated by new laws passed the previous year. In the end, as in any court adhering to Romano-canonical procedure, with its protections and high standards of proof, convictions were difficult to attain without resorting to arbitrary judicial discretion.

The court's justice, though, should not be seen as completely or radically unique from that of secular courts. Chapter Five will discuss findings on contumacy, jail, mediation, sentencing, and general judicial goals and also compare them to secular findings. Secular courts, too, faced some similar challenges in the adjudication of cases and punishment of criminals and its goals hardly seemed to have been exclusively repressive. Despite general late medieval trends towards punitive justice, this court and other secular courts often promoted arbitration, supported the use of guarantors, implicitly encouraged contumacy, and favored fines over corporal punishments. Repressive and mediatory justice co-existed whether we look at criminal or civil courts. When we take this into account, justice in the diocesan court of Carpentras seems less unusual, particularly compared to Italian ecclesiastical and secular courts. Contemporary critiques of ecclesiastical courts, while valid, may have responded as much to a desire to bring clergy under secular competency as a total rejection of a moribund judicial model.

Punitive limitations – and perhaps preferences – did undermine the judges' ability to discipline sinners and, in some ways, to resolve conflicts

fully. They also may have compromised their ability to facilitate the reconciliation essential to a penitential and re-integrative Christian model, particularly in criminal cases. By simply dropping civil cases whenever parties claimed extra-judicial settlements were in progress, the court may have facilitated peaceable and speedy resolutions, or alternatively, left disputes to fester. The court abjured a small number of sinners (one of the few penitential processes it used), and captured, sentenced, and fined only the most violent offenders (and/or obtained compositions from them to help re-establish the peace). It failed, however, to deploy the range of penitential options available and avoided practices like long periods of incarceration that could be deemed humiliating.

Ultimately, the court's goals might not have been primarily punitive or penitential, and rather more political, particularly in criminal cases. Shielding clerics from secular prosecution and addressing their offenses itself were crucial functions of the court. By supporting the competency of this court, the county and its legal administrators chose a more discrete and softer justice for its clergy. This could represent a politically expedient choice to protect its own from scandal and notoriety. By opening cases against them, clergy were protected from secular prosecution by the rules of double jeopardy – a principle to which proctors refer explicitly when civic courts challenged it. Additionally, the court created a politically useful venue for mediating inter-religious disputes in both of its forums. Tensions between the two religious communities were rising and civic leaders had long been critical of the bishop and rector's protection of them. Given the prominent role of clergy in arousing anti-Jewish sentiment (sometimes with lay accomplices), confining their hearings to the relative quiet of the forum within the bishop's palace denied those same men a chance to rally more support, more publically.

Perhaps the judges of this fractious diocese conformed to the model of the compassionate, merciful judge, but very likely, they simply accepted the orderly division of labor allotted to them, which protected the clergy, isolated major offenses for more diligent scrutiny, and offered a county-wide venue for creditors to seek redress. The court worked within circumscribed legal bounds as it confronted the perennial concerns of sex, violence, and religious coexistence, and played a broad role in regulating economic disputes. The court's role in the Comtat's governmentality was limited, but potentially useful. Except where clerical privilege was at stake, the court respected the boundaries of other jurisdictions and worked with secular legal authorities unless circumstances made that unworkable (and an efficient, integrated administrative structure was built to set such boundaries and navigate such problems particularly well). The county's judicial structure relegated the court to a regulatory role that was

modest in its criminal competency, but allowed it to focus on the discipline of its members, manage inter-religious conflict, and regulate the contracts of a diverse group. These roles may have represented compromises that suited the community and the Comtat's administrators – a specialized, socially-accepted function for the court. Certainly, the late medieval critical discourse on the limited disciplinary scope of the Church's canon law courts was warranted. But what it *did* focus upon and regulate may suggest pressing concerns, fit the county's needs at the time, and seemed appropriate for this court to address.

CHAPTER 1

The Accused and the Court: Confrontations and Legal Spaces

1.1 Introduction

On 28 November 1487, the vice proctor fiscal lodged a complaint in the officiality that he had received from the temporal authorities of Carpentras about some "notorious deeds."[1] Presumably, the city was abuzz with the tale. Late the night before, some clerics, some "iniquitous sons" of the city of Carpentras, had brutally beaten the "neophyte" priest Astorg de Petra outside of the local convent. The cleric Cristofor and his brother Antoneti Daniel were summoned, but not arrested, and sworn. The judge proceeded to question them separately, in secret, and each denied knowing anything about the beating. The judge asked where Cristofor had eaten, where he went afterwards, and who had accompanied him. Cristofor answered that he had eaten at his father's house with his family, had left afterwards with Antoneti, his brother, and spoke with a man named Gomi under the awning of Bartholomieu Chayssi (a location that we later learn is quite near the monastery). In an effort to narrow down the time (which Cristofor estimated to have been around the hour of eight) and gauge the secrecy of the act, the judge asked Cristofor if he brought a lamp (he had not). He denied approaching the monastery. The questions elicited details to be confirmed by his brother, Antoneti, who then told a different story. At first, he stated that he did not leave the house after dinner, but when confronted with Cristofor's statements, he admitted Cristofor went alone to the monastery, outside of which Antoneti found him. Furthermore, he brought a lit taper to guide his way and came with a relative. He estimated the time to be around eight. He did not see Astorg or anyone else. His admissions redressed his initial statement, aligning better with Cristofor's, but nevertheless compromised his brother's testimony, and Cristofor's presumed duplicity (a partial proof) further helped justify the opening of a case. The depositions received from two additional witnesses, Siffrein Terateli and Cristofor's wife, also questioned separately, confounded Cristofor's narrative. Immediately after this and

1 ADV B 3334 fol. 103r, 28 November 1487 (Fisc. c. Daniel); the case was opened on fol. 104r. For the transcription of this inquiry, see Appendix, Text 1. For the use of "*notorie factis*," see fol. 104v, specifically.

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a review of the evidence, the judge ordered that titles of inquisition be drawn up. The same day, the court opened a case against Cristofor and placed him under arrest. Later the judge would explain that Cristofor and his faction were involved in a developing conflict with the priest Astorg and had finally conspired and carried out a plot to attack the priest. This quarrel will be explored in greater detail in Chapter Two, but the initial transcript indicates well what we can discover in the records: how a case came to the court's attention, how the opening of a case might be justified, what evidence was under consideration, and how the judge played a role in the discovery.

This chapter will be dedicated to understanding the procedural rules structuring how criminal cases unfolded, with particular attention to the nature of reportage, the early stages of the process, and the presentation of evidence. A discussion of the substance of the criminal cases, the scope of the court's regulation of them, and its final sanctions will follow in later chapters. From January 1487 through December 1488, one hundred and eight-five criminal cases were initiated or in motion at the officiality, in which one hundred twenty-seven accusations could be identified against the one hundred and forty-six cited individuals.[2] The court also heard seventeen complaints seeking to assert or protect clerical privilege (see Table 1). Significant safeguards protected defendants throughout the process. Restrictions in canon law denying the use of proctors in criminal cases were ignored and all defendants who appeared used these legal representatives.[3] Proctors, who typically were drawn from the legally savvy group recognized annually by the court (predominately notaries), helped ensure that the defendant was protected from charges of non-appearance, guided through the process, and able to seize legal advantages. The judge (the official's substitute, Guilhem) pressed defendants to respond to accusations before he ruled and liberally granted delays to ensure that they would appear and had time to present a vigorous defense. His role was expansive and combined that of investigator, prosecutor, and judge, but his judicial decisions were not arbitrary. He was quick to release accused parties from preventative arrest,

2 The substance of the accusations was identified in 69 percent of the cases, but for only 58 percent of the individuals cited.

3 Brundage, *Canon Law*, 149 (found in Johannes Teutonicus, *Glossa ordinaria* to C. 2 q. 6 c. 40 v. *exploratores* and C. 3 q. 6 c. 10 c. *de expulsis*; Bernard of Parma *Glossa ordinaria* to X 5.1.15 c. *criminale*, Albertus Gandinus, *Tractatus de maleficiis*, (ed.) Kanotowicz 2:111–20). Defendants also were denied access to an advocate. Unlike canonical criminal cases, proctors were allowed in accusatory, civil cases and were common throughout Europe in that litigation by the 16th century. Note that at Carpentras, defendants still were expected to attend, present defenses, and hear sentences in person.

though often with the aid of guarantors; he rarely fined people for their first non-appearance; and was reluctant to make a ruling without the full proof of confession.

The functional contours of the court's criminal sphere were shaped by what information was brought to its attention. In the "inquisitory" process followed in criminal cases, ecclesiastical and secular agents acted as proxies for private accusers. For the criminal system truly to thrive, legal authorities had to embrace this disciplinary option. By and large, the court at Carpentras reacted to complaints brought to its attention by public authorities and, to a lesser extent, by injured parties, primarily clerical ones. In addition to secular authorities, a few churchmen, often archdeacons, recur as denouncers, possibly using this court as a routine disciplinary tool for more significant transgressions whose nature will be explored in later chapters. The court's procedural norms were shaped by both canon law and a local legal culture whose nature can be illustrated through an examination of its practices, participants, penalties, and jurisdictional interactions. All helped guide what offenses were pursued and how they were pursued. The path to the resolution of criminal cases could be bumpy, or alternatively, very short, as the process relied heavily upon the appearance of defendants and their confessions to reach a sentence, and without them it was easy was to face a dead-end, a stalled case. There are limits, of course, to what the evidence of Carpentras can tell us. Many cases did stall and drop from the records, perhaps suggesting that the court ignored cases with weak proof. Unsurprisingly, the protracted cases, particularly those ending in rulings, demonstrate best the court's procedural fullness.

1.2 The Court's Legal Space

The court kept a rigorous schedule, meeting every day except holy days and during ceremonial local events, like the rector's arrival into town. Audiences were held in the bishop's palace and occasionally in the courtyard in the summer. Court business began in the morning, though we do not know the exact time. The judge's demand that an accused party present himself at 8 o'clock in the morning suggests that business began around that time or after. Minor procedures continued in the evening, such as the presentation of sureties or payment of fees that had been demanded at the end of audiences that day. In addition to the sitting judge and a notary, the presence of the proctor fiscal – or his representative – was necessary for most audiences and court audiences might be halted entirely when he was absent. A group of proctors approved by the court appeared on a near-daily basis with them to handle both criminal and civil cases.

In a sense, the court's judicial space was defined primarily by the presence of the judge and his notaries and extended to wherever the latter traveled on official business. All formal legal actions required a notary and this is one reason why notarial *processi* are such valuable documents for understanding this court. The notaries recorded and gave legal sanctions to actions in a variety of places and carefully noted the witnesses to them. They recorded the commissioning of litigants' proctors in the nearest convenient location with whatever witnesses were at hand; this might be done in the bishop's kitchen, using as witnesses the cook as well as whomever was participating in the day's court proceedings. When litigants met to pursue extra-legal settlements in civil cases, a notary might be present to record the moment. These records could be consulted later if questions about them arose, and they helped the notary track and prove expenses (for the notary, this was a business space, as well). They did not always indicate the physical spaces in which he documented various acts, but they always noted the participants – again, people help create the space. In a moderate-sized community, these interactions and the comings and goings of appropriately garbed notaries "on duty" would easily be noticed by observers: they shaped a conspicuous legal space around him.

The notary of the criminal court traveled about the Comtat to deliver judicial orders and to pick up documents from secular and ecclesiastical legal authorities; at times this also involved recording the accusations of both parties. He authenticated documents. He exchanged information about ongoing cases with the rector. On occasion, his assistant, Nicolo, ran delivery errands, as when he went to the local abbess to inform her of restrictions placed on two local priests and then soon returned to the court to inform the judge that he had seen one of those very priests violating those restrictions.[4] This moment helps capture two of the wider potential functions of scribes and notaries. By Comtadine statutes, notaries could (and did) accept and refer information about crimes personally. The notary and his aides also served to link up the various judicial spaces of the Comtat by delivering documents among legal agents and litigants and relaying public information.

Legal authorities rarely usurped or intruded upon cases heard by the officiality and the jurisdictional atmosphere was typified by cooperation.[5] In large part, this was due to the remarkable integration and centralization of the

4 ADV B 3334 fol. 113r, 22 December 1487 (Fisc. c. de Petra).

5 While Carpentras has centuries of civic records extant, they are stored in sacks and have not been organized nor catalogued, making their perusal difficult. The work of the administrative historian, David, who sifted through the Comtadine central records and examined some of the local records, provides the most comprehensive study of the materials and the justice system of the Comtat in his *L'organisation administrative.*

Comtat, discussed earlier, the oversight by the proctor fiscal, and the apparent desire of the rector to ensure that the officiality retained control over cases involving the clergy. Authorities referred cases routinely to this court. The court also relied on secular officers to arrest people and used the jail of Carpentras for detentions. A few priests were held in temporary holdings in the residences of the bishop or in the cathedral, but, as one successful escape illustrates, these could have been makeshift house-arrests at best. The integration of legal spaces occurred also at the penultimate stage of the process when the official, proctor fiscal, and the appropriate secular high judge met to discuss sentencing. The court, then, was a part of a well-integrated local system adept at moving information and people and was linked through the actions of notaries, who traveled between both formal and ad hoc legal spaces. Conflicts over the control of cases tended to occur when the crime was particularly heinous, scandalous, and/or crossed several jurisdictional boundaries (and hence, confusion tended to increase the judicial conflict): they will be discussed at the end of the chapter.

1.3 Initiating Criminal Cases

In the records we typically first encounter a case when a court functionary presented information (and possibly an arrested individual) from a secular or ecclesiastical authority to the judge. Various civic, diocesan, Comtadine, and ecclesiastical authorities had the right to apprehend those whom they had reason to believe had committed serious offenses. These authorities, as well as any injured parties, could share information about crimes (or sins) with the court's staff directly, including the court's designated notaries, or could formally denounce the accused. Alternatively, they could approach the proctor fiscal who vetted information, and then, if appropriate, referred and presented the accusations to the court personally or through one of his delegated proctors.[6] After an inquiry, accusation, or denunciation was made, an arrest decree could follow.[7] When appropriate, secular authorities remitted arrested persons (typically clerics) directly to the custody of the church court along with the information that led to the arrest. Anne Lefebvre-Teillard notes that it was typical in France for temporal agents to capture offenders, though bishops and their

6 David, *L'organisation administrative*, 286–88.

7 If the accused hid, three calls were to be made at his or her door at eight-day intervals. See David, *L'organisation administrative*, 288.

judges could do so by their own authority, as they did in Carpentras.[8] Whence complaints arose is not always clear in these records, though some evidence of their origins can be isolated. But once the record begins in the *processus*, the procedural trajectory of the complaint, the evidence considered, and the judicial fate of the accused becomes clearer.

A criminal case involved the punishment of someone accused of violating the public order and its welfare.[9] Sins, as violations of the moral order and Christian charity, were actionable. But in addition to the nature of the act being weighed, what also made a case "criminal" – as opposed to civil – was the manner in which the case was initiated, and, potentially, the process by which it was pursued and concluded. In its early days, a full canonical procedure was meant to be an "accusatory" process in which an injured individual initiated a case: it required a high standard of proof and posed risks to the accuser, who was penalized for the costs and injuries of the trial if he or she lost.[10] According to Gratian, an accusation must be "indisputable and clearer than the mid-day light."[11] Confession or the sworn testimony of two credible witnesses was necessary to establish the full proof necessary for a guilty verdict.[12] This standard, along with the right to professional legal aid or proctors for representation in court, protected the accused, but its risks and restrictions could discourage prosecution. Accusers had to attend court audiences and provide proof, and should the judge rule against them, pay the costs of the trial and be subject to charges of false accusation. And, before an accusation was proven according to strict laws of proof, the courts could not punish a person.[13] This process made it difficult to address secret or hidden acts, especially sexual offenses.

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8 Lefebvre-Teillard, *Les officialités*, 102.

9 For this concept in French and English church courts, see: Fournier, *Les officialités*, 233–35 and Woodcock, *Ecclesiastical Courts in Canterbury*, 50–71.

10 The need for two eye-witnesses stems from much earlier legal standards, of course, ranging from scripture (Matthew XXVI.60) to Justinian. For further discussion, see: Brundage, "Proof in Canonical Criminal Law," *Continuity and Change* 11:3 (1996), 331; Lefebvre-Teillard, *Les officialités*, 73–75. For the evolution of standards of proof in criminal processes generally across Europe, see also R.C. van Caenegem, *Legal History: A European Perspective* (London and Rio Grande: The Hambledon Press, 1991), 82–104.

11 Gratian, C. 2 q. 8 c. 2 in *Corpus juris canonci, I: Decretum magistri Gratiani*, (ed.) Emil Friedberg (Leipzig, 1879), coll. 822: "*Sciant cuncti accusatores, eam rem se deferre debere in publicam notionem que munita sit testibus idoneis vel instructa apertissimis documentis vel indiciis ad probationem indubitatis et luce clarioribus expedita.*"

12 Gratian, *Decretum*, C. 2 q. 1 c. 2 and C. 2 q. 4, in *Corpus juris canonci, I*, (ed.) Friedberg.

13 Richard M. Fraher, "'*Ut nullus describatur reus prius quam convincatur*': Presumption of Innocence in Medieval Canon Law?," in *Proceedings of the Sixth International Congress of*

In an effort to better address crimes and pursue criminals, late medieval European courts that adhered to Romano-canonical law increasingly embraced procedural innovations that helped courts initiate cases more easily and expanded judicial discretion. These innovations laid the foundations for a criminal sphere of law, allowing public authorities to discover crimes, initiate cases, and respond to illicit acts more effectively and efficiently. Over time, more and more cases in church courts were pursued through an "inquisitory" process in which legal agents acting in the public interest, rather than private accusers, initiated cases against those suspected of committing illicit acts. New standards made it easier for judges to initiate cases by their office (*ex officio*), expedite the legal process, and, in some instances, rule without the full proof of classical canon law.[14] Protections previously held by defendants were challenged – most importantly the presumption of innocence, the right to representation and a full defense, and the high standards of proof necessary for conviction.

Two new options for initiating cases *ex officio* came into wider use at the end of the 12th century, *per notorium* and *per inquisitionem*.[15] To proceed *per notorium*, the judge need only establish that the crime and the identity of the criminal were well known in the community. He was obligated to find two witnesses to maintain that the community believed the offender committed the offense. The canonist Tancred argued that the judge also must summon and question the accused before sentencing (if he or she appeared) and adhere to the full procedures of the law (and its protections) if the crime was not found to be strictly "notorious".[16] The leading 13th-century proceduralist, William

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Medieval Canon Law, (ed.) Stephan Kuttner and Kenneth Pennington, *Monumenta iuris canonici*, Subsidia 7 (Vatican City: Biblioteca Apostolica Vaticana, 1985), 493–506.

14 For general discussions of these methods and their adoption, see: Brundage, *Canon Law*, 139–53; Dean, *Crime in Medieval Europe*, 5–10; Esmein, *Continental Criminal Procedure*, 78–106, 128–144; Richard M. Fraher, "Conviction According to Conscience: The Medieval Jurists' Debate Concerning Judicial Discretion and the Law of Proof," *Law and History Review* 7:1 (1989): 25–29; 33–40; Lefebvre-Teillard, *Les officialités*, 72–86. Dean stresses the wide variations in the pace and extent of this change: it was far slower in Aragon, Catalonia, Flanders, Poland, Naples and the Germanic states, where the types of crimes subject to inquisitory procedure were hedged by a variety of exceptions.

15 For a more detailed discussion see: Brundage, *Canon Law*, 144–50; Esmein, "Criminal Procedure," 78–85. As Esmein points out, canon law had permitted notorious crimes to be prosecuted without an accuser as early as the 9th century, but this rule was of little practical use because "*notorium*" remained ill-defined until the 12th century (Idem, 79–80).

16 Tancred, *Ordo iudiciarius* 2.7.1, in *Pilius, Tancredus, Gratia: Libri de iudiorum ordine*, (ed.) and trans. Friedrich Christian Bergmann (Aalen: Scientia Verlag, 1965): 151–52. For a discussion, see Brundage, *Canon Law*, 144–5 and "Proof," 333.

Durand, set rigorous limits and argued that if the defendant did not confess, notoriety itself was not enough for a conviction: full proof must be established before the accused could be declared guilty.[17] Proceeding *per inquisitionem*, the judge could initiate cases solely on the widespread bad reputation (*mala fama*) of the accused and use his discretion in establishing proof and deciding the case expeditiously.

Parsing out the cases at Carpentras into either of the two categories above is tricky, as the notary did not record consistently whence the accusation arose or use these technical terms to aid later historians."[18] Only occasionally did the notary use terms like "*inquistio*" or "*ex officio*" – both of which could have been taken for granted as the norm unless otherwise stated.[19] The term *per inquisitorem* does appear, as will be discussed below, but the case at the opening of this chapter, in which the cleric Cristofor and his friends attacked the neophyte priest Astorg, was the only one in which the notary used the term "notoriety". We can only presume that the temporal officials who referred this complaint (*querimoniam*) to the court had witnesses to this common rumor.

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17 William Durandus, *Speculum judiciale*, lib. 3, part. 1, *De notoriis criminibilis* and *Notorium quid sit* and lib. 3, part. 1 *Manifestum quid sit* (Basel, 1574, reprint Aalen 1975): 44–52. See Brundage, *Canon Law*, 146–47. For cases proceeding *per notorium*, a conviction could be made without a confession if the accused committed an illicit act in front of a judge while the latter served in his official capacity and in a crowd large enough for the act to be considered public knowledge (Brundage, 146–47). For general discussions of the jurists debate about whether the popes and princes might ignore the full *ordo iudicarius* and proceed with examination and inquisitions, see also Kenneth Pennington, *The Prince and the Law 1200–1600: Sovereignty and Rights in the Western Legal Tradition* (Berkeley: University of California Press, 1993), 227–31, 247–48, and 264–66.

18 ADV B 3334 fol. 28v, 16 April 1487 (Fisc. c. Ba. Arnaud); fol. 99v, 10 November 1487 (Fisc. c. Butchers of Carpentras); fol. 113v, 23 December 1487 (Fisc. c. Clarenci); fol. 1r, 1 January 1487 (Fisc. c. Dalphin); fol. 102r, 26 October 1487 (Fisc. c. Fautin); fol. 29r, 16 April 1487 (Fisc. c. Grisi); fol. 102v, 28 November 1487 (Fisc. c. Nicolo); fol. 29r, 14 April 1487 (Fisc. c. Odoard); fol. 29v, 27 April 1487 (Fisc. c. Ruff, Faci and Boyssetti).

19 For example, the case against the recidivist priest Astorg de Petra first appears in the records as "*Inquisitio facta contra Astorgium de Petra neophytum*": see ADV B 3334 fol. 111r, 17 December 1487 (Fisc. c. de Petra). An inquisitory procedure also was mentioned explicitly in ADV B 3334 fol. 87v, 15 September 1487 (Fisc. c. Brimeti): "*Dominus vicarius ex officio inquisivit.*" The last stage of cases sometimes indicated these origins explicitly, as well. See ADV B 3334 fol. 4v, 15 January 1487 (Fisc. c. Briac): "*. . . conclusit* [. . .] *et ad sententiam processit ut sequitur / christi invocato subsidio viso processu inquisitionali in . . . curia et Michaele Briaci delato inquisito partibus ex altera facto et formato ac tocius putantis causae meritis.*" See also ADV B 3334 fol. 131v, 4 April 1488 (Fisc. c. Laudon/Ricard): "*Compositio . . . mandans idem Dominus vicarius inquistiones . . . abolevit.*"

Whether the judge felt this was sufficient is not clear, as he immediately seized the opportunity to question Cristofor and his brother, both of whom had been delivered to the court along the complaint about their notorious acts. This is the only instance in which an interrogation preceded the initiation of a new case. The arrest and initiation of a case against Cristofor was justified by the "divergences" in their statements (indicating that one was lying, a partial proof) and additional witnessing. After the judge interrogated the brothers, Cristofor's wife and a man named Siffrein Tetareli were sworn in and concurred with Antoneti's testimony. More than notoriety, then, legitimized the judge's actions against Cristofor on behalf of this court and the notary was careful to indicate the various elements that supported those actions.[20]

Note that canon law jurists themselves did have qualms about innovations that undermined the rights of defendants, including these methods to ease the initiation of cases, as well as others that diminished the rights to delays and exceptions. As Richard M. Fraher describes, there was a spirited debate among them as they developed the procedures that increased judicial discretion and expanded or made more flexible the laws of proof.[21] Jurists recognized the perceived social need to address crime more vigorously, but also desired to maintain the laws existing rigors, safeguards, and limits. Pope Innocent III, the Fourth Lateran Council, and most canonists affirmed that defendants must be summoned, allowed to view the accusations, and given the chance to confess or to defend themselves if they appeared.[22] As historian Daniel Williman suggests, judges may have failed to take advantage of expedited procedures and summary rule and preferred a full *ordo* in order to ensure not only equity but also that their sentences would be deemed fully valid.[23] The care the judge

20 The best candidate for this can be found in ADV B 3334 fol. 103r–105r, 28 November 1487 (Fisc. c. C. Daniel). Thus case will be discussed further in Chapter Two.

21 Fraher, "Conviction According to Conscience," 40–64.

22 Described in Innocent's decretals of 1109 (X 5.3.31) and 1206 (X 5.1.17) and by the Fourth Lateran Council (4 Lat. c. 8). See discussion in Brundage, Canon Law, 147–49 and Proof 333–34. In "Conviction According to Conscience," Fraher discusses these actions and the debates, 32–64) in much greater detail than is relevant to our story on practice.

23 Daniel Williman, "Summary Justice in the Avignonese Camera," *Proceedings of the Sixth International Congress of Medieval Canon Law* (Berkeley, CA: 1980), (ed.) Stephan Kuttner, *Monumenta Iuris Canonici*, Series C: Subsidia, vol. 7 (1985), 438. Williman discusses the expansion of summary procedure (and judicial power in favor of papal sovereignty) in the papal court of Avignon. The summary justice introduced by Clement V in the early 14th century was meant to facilitate cases involving benefices, tithes, usury, and marriage. Its usage was hedged with rules: the judge must ensure that there was a proper citation and that participants took oaths to tell the truth, and he must accept all evidentiary statements that might expedite justice. While there need not be a written libel, there

exercised in establishing a foundation of the case against the clerical assailant Cristofor, which continued well beyond the first encounter described earlier, may have reflected the worries and concerns common to proceduralists and judges alike. Additional evidence was considered and Cristofor relied on a proctor who took advantage of delays to present a defense and to secure money to keep Cristofor's free from preventative incarceration and ensure his return for the next audience.

Though the church court at Carpentras certainly embraced the new methods above for initiating inquisitory cases *ex officio*, it preserved significant procedural safeguards. The judge not only allowed but demanded detailed defenses from defendants (sometimes along with extensive interrogations), permitted defendants to summon and cross-examine witnesses, and liberally granted them delays to prepare. The use of proctors was routine. On the whole, these findings best resemble practices common in France and least resemble those of England. Charles Donahue's study of Canterbury, for instance, suggests that the process was quite summary in criminal cases in England: the court presented the accusations, the defendants denied or confessed to them, and in the event of a denial, purgation was probably employed as support.[24]

The servants of the Comtat and court initiated the majority of the cases, *ex officio*. The proctor fiscal and his assistants (usually the vice proctor fiscal, who was delegated to serve this court specifically) promoted most cases, though the notaries and proctors who were commissioned to serve on behalf of the court also referred or initiated many cases. The notary referred to "titles of inquisition" throughout the cases without indicating who provided the information to the court or the proctor fiscal, or used phrases such as "based upon the warning" or "from the information received/referred." This continues a regional trend, as Jacques Chiffoleau, found, too, that most Avignonese cases started *ex officio*: curates, vicars, rectors, and priests were to aid in the court through periodic inquests.[25]

We often do not know exactly who brought these cases to the court or proctor fiscal. But traces are left when other legal authorities first addressed the crime. Sometimes it is clear that temporal officials of Carpentras began the

must be a written sentence. He draws from Clement v *Dispendiosam* (Clem. 2.1.2) and *Saepe contingit* (Clem. 5.11.2) and commentaries upon it. Williman asserts that the summary process was a necessity adopted to preserve papal interests and economic necessities, but it was not extensively used, nor did it "subvert" canonical justice (and often addressed what appeared to be frivolous delays and exceptions) ["Summary Justice," 442].

24 Donahue, "Introduction to Select Cases," 57. Also see Woodcock, *Ecclesiastical Courts*, 71.

25 Chiffoleau, *Justices du pape*, 262–63.

process: they ordered the arrest of four men and referred one warning or complaint (*querimonia*) against an individual to the officiality.[26] In one instance, the Comtat's rector received a complaint and took temporary custody of a man and then sent both to the officiality. The official's *locumtenens*, or sitting judge, himself accused a group of canons whom he had personally witnessed misbehaving.[27] Just as Donahue noted for Canterbury, we often know little about reportage for *ex officio* cases (and most extant records simply cannot be used to address the issue).[28] Only two criminal cases heard in 1487 and 1488 were "accusatory" in nature; that is, a private accuser initiated the case in his or her name and assumed responsibility for it.[29] Additionally, the court's proctors made seventeen procedural complaints against civic authorities to assert clerical privilege, presumably brought by the clergy under "harassment."[30]

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26 For examples of regent's referral and order of arrest, see fol. 156r, 24 August 1488 (Fisc. c. Marcelli) and fol. 165v, 22 October 1488 (Fisc. c. de Murs). For the others referred directly by the city of Carpentras, see, fol. 136r, 10 May 1488 (Fisc. c. Sayini) and fol. 104r, 28 November 1487 (Fisc. c. Daniel).

27 ADV B 3334 fol. 46v, 25 May 1487 (Fisc. c. Bertet); fol. 40r, 16 May 1487 (Fisc. c. de Affis); fol. 46r, 25 May 1487 (Fisc. c. De Pulcraquercus); fol. 46r, 25 May 1487 (Fisc. v de Riparia); fol. 46r, 25 May 1487 (Fisc. c. Pichor); fol. 46r, 25 May 1487 (Fisc. c. Rosselet); fol. 46r, 25 May 1487 (Fisc. c. Ubiton).

28 Donahue, "Introduction to Select Cases," 57.

29 ADV B 3334 fol. 18r, 16 February 1487 (Peyrona, wife of Fulquet c. Albert); fol. 156v, 24 August 1488 (Marcelli c. Ganter, als. Gerentor). Nothing of the substance of the first – for which only one audience was recorded – could be discovered. The second may have been related to actions against temporal officials: it is possible that Guilhem, who had detained Marcelli's team of horses, had acted in the name of the civic authorities who were attempted to pursue the latter, a cleric. Guilhem had refused their release until he was restituted for the expenses he incurred, The judge ordered that Guilhem's expenses be paid and that he return the team. Two cases were initiated by functionaries that were not *ex officio*, nor were they accusatory: ADV B 3334 fol. 124r, 15 Feb. 1488 (Proctors c. Crescas Israel) and fol. 160r, 9 Aug. 1488 (*Clavaire* c. Avinani). The first was a complaint that Crescas, a Jew, had taken the Latin Christian oath in court, an act prohibited to Jews. The second pertained to an unpaid census, something normally adjudicated in the civil records.

30 These were framed as "complaints" and presented by the proctor fiscal, who submitted letters of inhibition on behalf of the cleric listed. They include: ADV B 3334 fol. 20v, 1 March 1487 (Ranelli c. Temporal Officials of Mazan); ADV B 3334 fol. 155v, 23 August 1488 (Marcelli c. Officials of Caromb); ADV B 3334 fol. 11r, 26 January 1487 (Marcelli c. Officials of Caromb); ADV B 3334 fol. 10r, 19 January 1487 (Marceli and Caneneti c. Official of Caromb); ADV B 3334 fol. 28v, 11 April 1487 (Caneneti c. Officials of Caromb); ADV B 3334 fol. 8r, 19 January 1487 (Clemeti c. Officials of Carpentras); ADV B 3334 fol. 5v, 1 January 1487 (Dalphin c. Officials of Carpentras); ADV B 3334 fol. 131r, 29 March 1488 (Meyheri, Fisc. c.

Denunciations (*denuntiatio judicialis*), though infrequent, did drive at least twenty-one, or eleven percent of the cases (against twenty, or fourteen percent, of the accused individuals). Typically, priors and rectors made the denunciations as part of their role as disciplinary agents or as injured parties, rather than the lay denunciations found elsewhere.[31] The notary specified the names of the denouncers in all but three of the cases. Two denunciations targeted two groups, or a total of thirteen individuals: a group of five canons and their priest were accused by their prior of various misdeeds and a group of seven thieves of mixed status were accused by a curate and rector of the violent robbery of a church the latter served. Injured parties made two further denunciations (a priest and a servant of a prior).[32] Five were made by those whose connections to the incident are not clear: three by clergy (two *magistri* and two priests, one of whom was a former proctor fiscal) and two by laypeople (a woman and a carder).[33] Denouncers provided information necessary to open a case in the

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Official of Carpentras); ADV B 3334 fol. 91r, 5 October 1487 (Botini c. Officials of Mazan); ADV B 3334 fol. 20v, 1 March 1487 (Ranelli c. Official of Mazan); ADV B 3334 fol. 90v, 1 October 1487 (Villar c. Official of Mazan); ADV B 3334 fol. 18v, 16 February 1487 (Muset, also Juget c. Official of Mormoirone); ADV B 3334 fol. 123v, 13 February 1488 (Arnaud c. Officials of Pernes); ADV B 3334 fol. 13v, 30 January 1487 (Proctor of the Curia, Blayni c. Officials of Pernes); ADV B 3334 fol. 83v, 5 September 1487 (Daniel c. Officials of Pernes); ADV B 3334 fol. 17v, 13 February 1487 (Fisc., Vadoti c. Regis, Officials of Pernes).

31 This should not be confused with "*denuntiatio canonica*", which was part of the penitential process. ADV B 3334 fol. 59v, 27 June 1487 (Fisc. c. Achard); ADV B 3334 fol. 61r, 27 June 1487 (Fisc. c. Bontossi); fol. 60r, 27 June 1487 (Fisc. c. Ceard); fol. 66v, 12 July 1487 (Fisc. c. G. Clemeti); fol. 11v, 17 December 1487 (Fisc. c. de Affis); fol. 2r, 5 January 1487 (Fisc. c. de Anterone); fol. 142 r, 3 June 1488 (Fisc. c. de Bonoloco); fol. 137v, 16 May 1488 (Fisc. c. de Murs, Jr.); fol. 11v, 17 December 1487 (Fisc. c. de Pulcraquercus); fol. 11v, 17 December 1487 (Fisc. c. de Riparia); fol. 11v, 26 January 1487 (Fisc. c. de Sal); fol. 10r, 19 January 1487 (Fisc. c. Fauchaud); fol. 155r, 22 August 1488 (Denunciation by Magister Blasin c. Jusia); fol. 73v, 23 July 1487 (Fisc. c. Pichor); fol. 11v, 17 December 1487 (Fisc. c. Pichor); fol. 57r, 22 June 1487 (Fisc. c. Jo. Raynard); fol. 11v, 17 December 1487 (Fisc. c. Rossolet); fol. 57r, 22 June 1487 (Fisc. c. Soyini); fol. 3v, 15 January 1487 (Fisc. c. Thomas); fol. 57r, 22 June 1487 (Fisc. c. A. Troch, c. P. Troch, and c. R. Troch); fol. 11v, 17 December 1487 (Fisc. c. Ubiton).

32 See note 30: these include the denunciation of de Sal and the first denunciation against Pichor.

33 See note 30: the denunciations include, respectively, those against Jusia, Fachaud, Thomas, and Clemeti. Dominus Perini Bertran, the priest denouncing de Anterone, served as a proctor in criminal and civil cases [see ADV B 3334 fol. 169r, 7 November 1488 (Fisc. c. Ratelli) or fol. 233r, 26 October 1487 (Ysnardi c. Langeri)], but also became involved in the pursuit of other cases of the proctor fiscal against individuals, such as the one against Pichor based upon the denunciation by the injured servant of a prior.

court's name, but were distinct from accusers and safe from the legal obligations and perils attendant with that role.

But, there were other ways that an aggrieved or invested ecclesiastical party could play a continuing role in a case. After a case was opened against the accused, it could be joined by an injured party or authority (*ex officio promoto*), and such cases probably stemmed from an initial "denunciation" that was not recorded or occurred before the proceedings of these years began.[34] The notary indicated this in the headings to the case, as he did for Stefan de Meage's denunciation of Paulo Pichor: "*Fisci iniuncto Stefano de Meage contra Dominum Palaundem*."[35] The case records contain four more cases in which interested parties joined (two by laypeople and two by the court's proctors), a mere two percent of the total.[36]

Legal agents apprehended only nine men (eight of whom were clerics) before the case was in motion.[37] Drawing on Gratian, Paul Fournier notes that clerics were subject to direct arrest only in exceptionally grave cases, such as serious assaults and homicide, and were to be delivered immediately to an ecclesiastical judge, who could degrade clerics from their orders and release

34 The promotion of cases by clerics in cases to protect their privilege has been excluded here.

35 ADV B 3334 fol. 74r, 24 July 1487 (Fisc. c. Pichor).

36 For the cases promoted by laypeople, see ADV B 3334 fol. 4r, 15 January 1487 (*Fisci iniucto nobilis Berteto Angeri contra Bosse*) and fol. 6v, 16 January 1487 (*Johannes Sanzeti pastoris iuncto fisco contra dominum Johannem Botardi*). Proctors serving the court brought information leading to the opening of two additional cases. In one, the injured party, a notary who served the court on a frequent basis, made a statement (*exhibtio*) to the court before the case was opened. Magister Siffrein Durand presented the other to the court as an *exhibitio*; see ADV B 3334 fols. 80v, 23 August 1487 and 81r, 23 August 1487 (Fisc. c. Roys). He spoke on behalf of the proctors of the curia as a group, who accused a Jewish witness for swearing illicitly in court; see fol. 124r, 15 February 1488 (Proctors c. Israel). Clergy, who presented an *exhibitio* during a case could join the proctor fiscal later (particularly those holding a position of authority over the accused) and monitor it just as after a denunciation; see ADV B 3334 fol. 85r, 22 June 1487 (*Exhibitio titulem contra Dominum Antonium Gayoti sacristan de Paterius*). Stephen de Meage, servant of the Dominus Prior of Greso, presented the titles against the accused. At a later audience, the prior joined the case; see fol. 151v, 4 August 1488 (Fisc. c. Gayoti). The release of the accused was contingent on his submission to the Prior.

37 ADV B 3334 fol. 102v, 28 November 1487 (Fisc. c. Nicholomio); fol. 25r, 22 March 1487 (Fisc. c. Amaureri); fol. 38v, 2 April 1487 (Fisc. c. Arbori); fol. 28v, 16 April 1487 (Fisc. c. Ba. Arnaud); fol. 49v, 6 June 1487 (Fisc. c. de Fonte); fol. 156r, 24 August 1488 [also mentioned on fol. 158v, 26 August 1488 (Fisc. c. Marcelli)]; fol. 65r, 11 July 1487 (Fisc. c. Michael); fol. 71r, 18 July 1487 (Fisc. c. Ravelli); fol. 136r, 10 May 1488 (Fisc. c. Sayini).

them to secular authorities for the punishment of grave crimes.[38] Most of these apprehended men indeed were clerics who committed serious offenses: assault, rape, armed robbery, and religious fraud.

Whether the case began by inquisition, denunciation, or accusation, once the case was in motion, the court usually accorded to the accused remarkable legal protections, including representation and opportunities to marshal a full defense.

1.4 The First Audience

Before accused parties faced their first audience at Carpentras, the proctor fiscal, his agent, or a proctor representing the court, produced and "published" the titles of inquisition (the accusations to which the defendant was to respond) or a private party produced a libel (a petition of complaint for redress). These documents were loose and do not survive, but they should have included the name of the judge and the accused, the accusations, and a demand for redress. Often the charges were read aloud – in the vernacular when necessary – and would be referred to throughout the case. This accorded defendants a significant advantage when choosing how to frame their confessions. The notary commonly recorded a summary of allegations in his entry, ranging from a terse phrase to a detailed narrative of events. When copies of these initiatory documents were not made available at the first audience, proctors requested them along with a delay.

Once a notary composed the titles, the accused was summoned and, in some cases, arrested.[39] Copies of the judicial summons might be submitted at the first audience for scrutiny, but in only one case was there a dispute over the successful delivery of a summons at Carpentras. The judge expected accused parties to appear to hear the charges and encouraged them to present defenses in their own words, preferably, or through a proctor. Appearances were scheduled a full week in advance, barring holidays.

38 Fournier, *Les officialités*, 153.

39 Either an *apparitor* (or bailiff) delivered citations in writing or a *nuncius* did so orally, as described in Fournier, *Les officialités*, 147. We do not know who the *apparitor* or *nuncius* was at Carpentras or whether the role was held by yearly or at-will commissions. A man named Nicolo appeared to fulfill this job as well as other deliveries of judicial orders.

In the interim between the summons and the first appearance, the accused used their time to secure proctors if they had not done so previously.[40] Throughout these registers, one finds examples of people securing individual proctors or even the entire group of proctors attached to and recognized by the court. This accorded the accused flexibility, better protection against contumacy, and may have helped guard cases from stalling.[41] This procedure was performed outside of court audiences and witnessed by two persons, wherever and whoever was convenient.[42] Given that the court – or rival proctor or litigant in a civil case – could contest whether a given proctor legitimately represented the accused, the notaries documented this action carefully as part of their daily records. The notarization, in turn, generated a notarial fee; notaries were sure to track expenses owed to legal agents, including themselves.

In criminal proceedings, defendants had no legal *right* to representation. The accused could be denied access to both proctors and legal counsel of advocates.[43] Niccolo de Tudechis, Abbas Panoramitanus, who was disconcerted by the constricted rights accorded to the late medieval defendant, affirmed that one need not deny it to the accused (thus, it was not a positive right).[44] Medieval canonists debated the issue and most concluded that proctors could not represent defendants in criminal trials. In English practice, proctors were "seldom, if ever allowed," according to Richard H. Helmholz.[45] On the other hand, Lefebvre-Teillard affirms that a proctor was permissible in France. At Carpentras, the privilege of employing a proctor was scrupulously maintained, and the accused typically used one of the court's commissioned proctors. Proctors appeared in the defendant's name (thereby helping the latter avoid non-appearance penalties), aid them in arguing their cases (or argue for

40 ADV B 3334 fol. 66v, 12 July 1487 (Fisc. c. Ricard/Laudon) and fol. 66v, 12 July 1487 (Fisc. c. Laudon). The judge ruled that they should be re-summoned because they were not apprehended personally.

41 For example, see: ADV B 3334, fol. 107v–108r, 4 December 1488.

42 For example, see ADV B 3334 fol. 21v, 3 March 1487.

43 Brundage, *Canon Law*, 149. His conclusion is based primarily upon the following authorities: Johannes Teutonicus, *Glossa ordinaria to* C. 2 q. 6 c. 40 *expolatores* and C. 3 q. 6 c. 10 v. *de expusis*; and, Bernard of Parma, *Glos. ord.* to X 5.1.15 v. *criminale*. Brundage implies that this denial was routinely applied in England.

44 Esmein, *Continental Criminal Procedure*, 91. He points to Panormitanus, "*Practica*," c. 150, 30: "*Advocatus inquisiti quibus modis prospicere possit suo clientulo*."

45 Helmholz, *Roman Canon Law in Reformation England* (Cambridge: Cambridge University Press, 1990), 117–18. This conclusion pertains to criminal suits and not civil suits, in which the numbers of advocates and proctors increases at the turn of the 16th century.

them), and find opportunities for delays and exceptions. While one might fear that cases could be prolonged by such legal aid, it is possible that the routine use of a regular staff of proctors had benefits. It may have helped cases from stalling and there was an easy working relationship among the knowledgeable staff that may have made each hearing run more quickly.

Under oath, one of the first actions a defendant took was to affirm or deny the accusation(s), and then, if necessary, schedule a delay for the response. If the accused did not comment, the judge asked if he or she wished to make a formal defense now or in the future. The response was necessary to establish the *litis contestatio*, the point at which the parties (the court and offender) joined formally in a lawsuit. At the end of this audience, the proctor of the accused often asked for copies of the titles of inquisition or libels to inspect for error and to consult during the trial. A list of questions to be posed to the defendant and witnesses also was demanded occasionally. The judge *could* rule at this point, but at Carpentras, he rescheduled the matter for further consideration and permitted delays to elicit new evidence and witnesses. At this point, he might prod defendants to answer a few questions about the accusations and might continue to do so later in the trial if he or she refused to confess to, or deny, the accusations.

Cases could falter quickly due to the failure of the accused to appear, a paucity of evidence, a referral to another court, an obviously erroneous accusation, or the resort to extra-judicial resolutions. Forty-two, or twenty-three percent of the one hundred eighty-five cases, at Carpentras in 1487 and 1488 never progressed beyond the first instance primarily due to contumacy (non-appearance) and arbitration,[46] although we rarely can speculate why based on the records. However, it was common for cases to fail to reach conclusions in any medieval court. Having unresolved legal affairs (and a potential order of excommunication for contumacy) could compromise a cleric's business life and livelihood, as well as his ability to engage in contracts or open legal suits. Ultimately, though, the court relied upon the threat of excommunication for contumacy and upon secular agents to apprehend contumacious suspects. In 5 of these 42 cases, an initial failure to appear or send a representative was

46 Wunderli, who tracked the numbers for 15th-century London, found a good percentage of dropped cases: in ten percent of the cases, the accused never received a citation; in forty to fifty percent accused parties acquitted themselves by compurgation or the case was dismissed; about one-third of the cases were simply dropped (*London Church Courts*, 74). Contumacy in secular courts will be discussed further in Chapter Five.

enough to stall the case.[47] Four of these cases were left suspended without a further day assigned, suggesting the court had little will or ability to pursue the case.[48] Only two were resolved by a summary court order made the same day.[49] One case may have been referred to another court because the accused was not a cleric, as the court's proctor had insisted.[50]

If the accused failed to appear, the court's proctor requested that he or she be declared contumacious and excommunicated. If the judge agreed, he commissioned the notary to compose a letter of excommunication, an order which was not automatic and sometimes ignored. If a defendant failed to appear, but his or her proctor did, the latter requested that the judge refrain from excommunicating the accused and instead grant a delay. Technically, the judge could proceed to a sentence against the contumacious at the first audience, but at Carpentras, he almost always chose not to exercise this power. He rescheduled an audience for the evening or in eight days (sometimes simply with noted in the records with an "*octo*" at the end of the entry). At the end of this, or any audience, the court's proctor could request that the judge incarcerate the accused or make the latter secure a surety, though typically this was done only for serious offenses.[51]

During the trial, the accused (or their proctors) were allowed four delays each, in accordance with full canonical procedure. Upon the request for the fourth delay, the proctor swore an oath that dilatory action was justified and that he did not make his request maliciously or frivolously, an act recorded by the notary.[52] Delays were discouraged by canonists because they

47 The accused included four laypeople and a Jew, against whom the court may have had less pressure to bear than against clerics. ADV B 3334 fol. 128v, 10 March 1488 (Fisc. c. Eraud, Odol and B. Arnaud); fol. 169v, 13 November 1487 (Fisc. c. de Stella); fol. 49r, 2 June 1487 (Fisc. c. Martin).

48 ADV B 3334 fol. 156v, 24 August 1488 (Marcelli c. Ganter); fol. 128v, 10 March 1487 (Fisc. c. Guilhard); fol. 18r, 16 February 1487 (Peyrona, wife of Peire Fulquet c. Albert); fol. 132r, 14 April 1488 (Fisc. c. Caponi); fol. 90v, 1 October 1487 (Fisc. c. de Vecy); fol. 11r, 26 January 1487 (Fisc. c. Gigandi).

49 ADV B 3334 fol. 156v, 24 August 1488 (Marcelli c. Ganter); fol. 128v, 10 March 1488 (Fisc. c. Guilhard).

50 ADV B 3334 fol. 5v, 15 January 1487 (Fisc. c. Rostaing, also Le Gascart).

51 See Chapter Five for more on contumacy, excommunication, sureties, jail and bail.

52 For example, see ADV B fol. 53r, 9 June 1487 (Fisc c. Caneneti): "*Comparavit Rostagni petens quartam dilationem quam maliciose nec calumpniose non petere iuravit*." For a discussion of this oath see James A. Brundage, "The Calumny Oath and the Ethical Ideals of Canonical Advocates," in *The Profession and Practice of Medieval Canon Law, Variorum Collected Studies Series* (Aldershot, Hampshire: Ashgate, 2005), 793–805.

extended the time, cost, and inconvenience of the trial. Nevertheless, here they were granted frequently and did contribute to the lengthening of cases, just as they did throughout the courts of neighboring France.[53] Proctors used the time to obtain and view copies of charges or depositions, to secure evidence, and to formulate defenses.[54] Delays also allowed time to share information with other courts and authorities.[55] Proctors (and the notary) kept careful track of delays: in one case, a defendant's proctor reminded the court of his right to use four delays if necessary to prove his case.[56] Given the possibility of delays, the frequency of holidays and the intermittent absences of court functionaries, the duration of cases varied from a few days to over a year.

1.5 Confronting the Accused: Confessions and Defenses

Like the procedures for initiating cases, canonical standards of proof were undergoing reform in the later medieval period. Fundamental to classical canonical due process was the rule that the court must establish full proof of guilt before punishment and sentencing, though later jurists argued that the public good would be better served, and the repression of crime more effective, if less strict standards of proof were allowed, as discussed above.[57] To the high standards of full proof (*plena probatio*) in the *ordo iuris*, which required

53 Lefebvre-Teillard, *Les officialités*, 51.

54 Ibid. At Carpentras, delays were too common to list beyond a few examples. For a proctor asking for copies of the titles of inquisition and time to respond to them, see ADV B fol. 127v, 3 March 1488 (Fisc. c. Agni). The proctor fiscal requested delays to better prove his cases or to refute the denial of the accusation(s) by defendants, often with no explanation recorded; see fol. 47v, 1 June 1487 (Fisc. c. Ba. Arnaud) and fol. 154r, 12 August 1488 (Fisc. c. Combe). For a delay to process witnesses, see fol. 56r, 22 June 1487 (Fisc. c. Fachaud). For a delay allowing a proctor to review all the proceedings in the case, see fol. 4r, 15 January 1487 (Fisc. c. Bosse). Continuances, too, could be granted when the *locumtenens*, official, or proctor fiscal was not present; see fol. 22r, 8 March 1487 (Fisc. c. Dalphin) and fol. 27v, 30 March 1487 (Fisc. c. Amaureri). Continuances due to impending feasts were also conceded: see fol. 62r, 3 July 1487 (Fisc. c. Caneneti).

55 See section on "Jurisdictional Interaction," below.

56 ADV B 3334 fol. 111r, 14 December 1487 (Fisc. c. Roque): "*. . . de Abrigüs dicens . . . non esse sibi concedendo ne impediat sibi dilaciones quartas quam habet ad probandum Dominus vicarius . . . concessit.*"

57 In great part, lowered standards were associated with the initiation of cases and jurists debated revisions to the earlier standards: see section on *Criminal Procedure* above. Brundage, "Proof," 333–36. For a discussion of concept of assumed innocence, see Fraher, "Presumption of Innocence in Medieval Canon Law?" 493–506.

confession or two eye-witnesses, were added new partial proofs that could add up to a full proof. Unfortunately, the sentences of the officiality of Carpentras lack the detail to allow us to trace how the judge weighed proof, but, before pronouncing his rulings, he occasionally stated that his decisions rested on defenses, interrogations, witnessing, and/or physical evidence. Purgation (*purgatio canonica*), a process by which defendants proved their lack of guilt through the use of oath-helpers, or compurgators, though common in England, is notably lacking in the records of this criminal court.[58]

In the hierarchy of proof, confession rested at the top as the most preferred and fullest form of proof: these were not the private confessions made before one's own priest but the public admission of an offense given before the judge or his representative. Confession, obviously, was (and remains) a privileged form of formal legal proof in many court systems, but a full courtroom confession shared elements with the act done in the confessional, a process in which sinners worked with confessors to clarify their behavior, intentions, and awareness of the commission of an illicit act, then demonstrated contrition, and finally received counsel and correction. Later, this work will explore how the judge sometimes pursued a similar path in court and how the confession could serve both a legal and spiritual function. On a practical level, confessions also could contain the details that made it easier to strike at the root of the conflicts driving so many cases and to better judge the character of the accused. At Carpentras, the judge protected and reinforced the rights of those accused to defend themselves by pressuring them to present a defense and re-summoning contumacious defendants for another chance to exercise that right. The process typically involved asking the accused whether he or she agreed to or denied the offenses listed in the titles of inquisition.

Admissions of guilt ranged from simple assents and denials, to partial (or qualified) confessions, to detailed narratives. The form and fullness of confessions varied, and, as Chapters Two and Three will illustrate, these defenses could involve detailed explanations geared to very specific strategies. From time to time, it is clear that a defense was made while carefully consulting the written charges, confirming or denying each line item by number.[59] When necessary, charges were read aloud to the accused in the "vulgar tongue" to

58 For a discussion of compurgation in action, see Helmholz, "Crime, Compurgation and the Courts of the Medieval Church," *Law and History Review* 1 (1983): 1–26.

59 Confession narratives will be analyzed in Chapters Two and Three. For an example of response to charges, title-by-title, see ADV B 3334 fol. 156v–157r, 25 August 1488 (Fisc. c. Marcelli) and Appendix, Text 3.

facilitate the process, even in one case, to a cleric.[60] After the response, the court's proctor requested a delay to prepare counter-responses and collect evidence (usually by gathering witnesses or, more rarely, written instruments).

Whether the defendant denied or accepted the accusations in a confession, the judge could question the accused further directly, though it was not the norm. The judge was much more likely to question those accused of sexual sins and clerical disobedience, and, less rarely, for acts of violence. In part this suggests a conceptual and procedural separation of what we might consider today "sins" versus "crimes", as will be explored in the following two chapters; the choice to question the accused facilitated abjuration, the preferred resolution for sexual and disciplinary offenses committed by clerics. In most cases of violence, theft, and fraud, the judge simply wished to establish the facts and assign blame appropriately, but he might question the accused to judge his character and intentions as well.

When the initial audiences failed to yield a formal denial or confession, and the accusations were substantiated by further evidence, the judge might attempt to press again for a full confession. For example, in the case that opened this chapter, concerning the beating of the neophyte priest Astorg, we find the judge confronting the accused brother, Cristofor, again two weeks later on 11 December 1488.[61] By this time, the judge had examined all the information received by the court (including the deposition of an additional witness) and had interrogated Cristofor (out of court and under public oath, *sancta dei evangelia*). Based upon this evidence, the judge reconstructed the attack and the events leading up to it. After concluding this narrative, he asked Cristofor whether the beating had occurred as he had said and if his accomplice would know. Cristofor simply replied "no" to both queries and that was that: the court had the half-truth of Cristofor, who had lied, and also the notoriety of the event and the participants. Perhaps the judge hoped to elicit the coveted confession or allow Cristofor one last chance to present a defense, a legal act the judge seemed keen to maintain in his court. The case ended that day without an admission of guilt and, as with most cases, without a formal sentence recorded. Instead, immediately after these final questions, Cristofor paid an unusually large composition of 24 gold shields (out of the 25 requested) and the judge canceled the case. We will return to this case in the next chapter.

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60 See the example in ADV B 3334 fol. 22v, 9 March 1487 (Fisc. c. Dalphin): "*. . . comparavit delatus qui medio iuramento imposita sibi pena excommunicationis et xxv livres titulis prodictis sibi lectis et vulgarizatis* [*sic*] *respondit*."

61 ADV B 3334 fols. 110r–110v, 11 December 1488 (Fisc. c. Daniel).

Cristofor was unusually tight-lipped: most defendants we encounter, particularly those accused of violent crimes, needed little or no prompting to elicit their statements in the courtroom, including admissions of guilt. Many of those accused of violent crimes appeared personally. About half of the accused offered formal defenses that were recorded: sometimes their proctor summed up their defense and then the accused responded to questions posed by the judge. Defendants readily embraced the opportunity of a defense to spin the story in their favor, often in bids to transform themselves into victims while simultaneously smearing their enemies. At times, the judge even guided them through this process by asking whether they had been provoked, thereby facilitating exculpatory tales. Chapters Two and Three will explore the narrative tactics behind these tales and their meaning.

1.6 Witnessing as Proof

The testimony of two witnesses could establish full proof in Romano-canonical law and every witness was required to take an oath to tell the truth for both sides. Though proctors on both sides at Carpentras argued for the exclusions of witnesses from time to time, the notary did not record their grounds for doing so and the judge usually rejected their requests.[62] Occasionally, the judge stipulated that interrogations should be held at "different days and times" and that each witness was to be questioned separately in secret.[63] By law, a copy of the

62 For the development of witnessing procedures, see Charles Donahue Jr., "Proof by Witnesses in the Church Courts of Medieval England: An Imperfect Reception of the Learned Law," in *On the Laws and Customs of England, Essays in Honor of Samuel E. Thorne*, (eds.) Morris S. Arnold, Thomas A. Green, Sally A. Scully, and Stephen White (Chapel Hill: University of North Carolina Press, 1981), 130. The canon law specified a variety of reasons for excluding witnesses, who should not be motivated by friendship, hatred, monetary gain, or other benefit.

63 For this practice, see ADV B 3334 fol. 139v, 22 May 1488 (Fisc. c. Rabouxi): "*Comparavit Scutifferi dans litteras citatorias quare . . . sunt citati sub pena excommunicationis dominus Thomas Barrerie presbiter frater Siffredus Parati prior . . . Antonius Baccalaris Petrus Mercer alius Larger Antonius Montardi et Benedictus Fruitus de Paterius veritatum testimonium quos si compareant petivit admicti* [*sic*] *iurari et recipi si veros non compareant eos resignari et excommunicari ac litteras excommunicationas sibi decerni . . . Et ulterius quia aliqui et ipsi tanta tabescunt senectutes quos huc venire non possent . . . Dominus locumtenens prafatos testes comparentes admisit ice* [*iure cautum est*] *non comparentes veros contumaces repputavit* [*sic*] *litteras excommunicationas contra eos decernendo . . . ceteros testes citatores valetudinares et maliores honestates mihi notari causae comitti assignando eidem*

deposition was to be given to both parties (the defense and the proctor pursuing the accusations) to prepare for cross-examination.[64] These were presented and scrutinized at Carpentras, as was noted in the record. Proctors could cross-examine witnesses in court and the accused could respond with a defense, typically in the next audience. In one case, the judge simply asked whether the defendant might wish to remain to hear the depositions of witnesses and make his defense immediately.[65] The judge could use an extraordinary procedure to question witnesses himself without cross-examination, though he very rarely did.[66] Proctors, whether serving the court or the accused, requested witnesses routinely, and only two cases contain any kind of judicial intervention in the process, both of which were minor.[67]

Depositions were not kept in the criminal *processus*, but the notary documented well the procedures surrounding them. At the request of a proctor, the court issued a summons and commissioned the notary to record the deposition using a prepared set of questions. Having been summoned on pain of excommunication for contumacy, witnesses appeared in court to swear to the truth of their testimony. Their depositions were then produced, opened, examined, and resealed, as with other legal documents. When witnesses failed to appear, typically the court simply summoned them again. Though some witnesses missed the initial appearances, only one witness proved truly intractable: he appeared just after his wife had been sworn in, but repeatedly refused to swear before this court, rather than a secular one. The judge warned him, labeled him a disobedient rebel, and then ordered the notary to draw up letters

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domino de Pomelerio ad videndum eos produci recipi et iurari singulos dies et horas." See also the pre-trial interrogation of the Daniel brothers (Appendix I, Text I).

64 Esmein, *Continental Criminal Procedure*, 90–93.

65 ADV B 3334 fol. 165v, 22 October 1488 (Fisc. c. Asson): "*Dominus vicarius eundem delatum interrogavit si vellit* [*sic*] *stare deppositionibus* [*sic*] *testium . . . ac si vellit* [*sic*] *facere aliquas deffensiones* [*sic*]."

66 Ibid., 128–30. Witnesses were only questioned directly in the actions preceding the case against Cristofor Daniel that opened this chapter.

67 In one instance, the judge asked if the accused wished to wait for the witness to be deposed and then to respond to the deposition; see ADV B 3334 fol. 165v, 22 October 1488 (Fisc. c. Asson). In the other, a witness was re-summoned by the proctor of the defense for inadequate answers to the five questions; see ADV B 3334 fol. 126r, 26 February 1488 (Fisc. c. Ravelli). For a continuation of the process, see ADV B 3334 fol. 129v, 17 March 1488 (Fisc. c. Ravelli): "*Comparavit Achardi qui deliberando dixit Gabrielem Bilhabaudus testem eius partem productum fuisse super quarto et quinto articulis minus decenter examinatis . . . petivit eum rexaminari per eundem dominum vicarium . . . eidem domino Achardi ad putandum dictum Bilhabaudi testem ad effectus reexaminandi per totam*."

of excommunication against him.[68] Occasionally, the judge made allowances for delays or nonappearance due to the needs of the harvest or illness: in such cases, he might delay the audience and commissioned the notary to travel and record the testimony of the witness.[69]

Witnesses were called in only thirty cases at Carpentras (thirty percent of the one hundred eighty-five cases): they ranged in number from one to ten per case and most were listed by name. All but one witness – who nevertheless was successfully summoned by the defense – resided in the diocese.[70] Thirteen were victims of the attacks. In only three cases did women testify.[71] Expert witnessing was uncommon in criminal cases, barring a few cases over fraud and one over medical treatment. Notaries and various authorities, who validated the authenticity of documents on a regular basis in the civil forum, did so more rarely in criminal cases.[72] Occasionally, the court's notary traveled to establish proof: for example, he traveled to verify an excommunication in another parish by examining its book of excommunications and receiving an oath regarding its veracity from the curate.[73] Some of our best recorded evidence on witnessing and proof, however, does come from two unusual cases employing expert witnesses.

In one, the judge commissioned expert witnesses to evaluate whether a potentially mortal injury had been made by a doctor. On 10 May 1488, the court jailed and initiated a case against Magister Nicolas Sayini, an unmarried physician residing at Carpentras who had been referred to the court by the city's

68 ADV B 3334 fol. 81r, 23 August 1487 (Fisc. c. Roys): "*Comparavit ibidem dicti Chapussi et Johanna citati quae Johanna dicere veritatem iuravit prefatus vero Chapussi iurare recusans se petivit suo iudici seculari remitti quem prefatus dominus vicarius triva* [*sic; trima*] *et canonica monitione . . . monuit sub pena excommunicationis quam his tulit scriptis ut iurare de veritate testifficanda* [sic] *habeat* [. . .] *Chapussi ipsem quem prefatus dominus vicarius actenta tali inobeditus* [*sic*] *rebellem et contumaciam reputavit litteras excommunicatiorias contra eum decernendo.*" The witness' choice was not considered religious in motivation.

69 For the commissioning of the notary to take the testimony of a witness who was unavailable due to the harvest, see ADV B 3334 fol. 128r, 8 March 1488 (Fisc. c. Guiffredi): "*Comparavit Achardi dicens habere unum testem qui . . . est dietim in campis pro agricultura cuius examinationis receptare notarium causae comitti . . . Dominus de consenti.*"

70 ADV B 3334 fol. 101v, 21 November 1487 (Fisc. c. Ravelli).

71 ADV B 3334 fol. 139v, 22 May 1488 (Fisc. c. Rabouxi); fol. 81r, 23 August 1487 (Fisc. c. Roys); 138v, 17 May 1488 (Fisc. c. Sayini).

72 See Chapter Four.

73 In the end, the oath of the vice curate sufficed. See, ADV B 3334 fol. 95v, 22 October 1487 (Fisc. c. Vive).

temporal officials.[74] Three days later, the court's proctor explained that Nicolas had inflicted a wound to the head of the merchant Girard de Frande.[75] He claimed that Nicolas, apparently in the course of surgery, had left Girard mortally wounded (though, in fact, he did not die). Upon the physician's request, the judge commissioned the surgeons, Magistri Johan Dominci and Andrieu Giraudi, to assess whether the wound was appropriate and curable. The notary Reginald Thomas, who accompanied them as a witness to their actions, soon returned to explain their findings under oath. The notary reported that the two examined the wound without causing suffering. In their sworn statements, the surgeons concluded that the patient was cured and saved by the wound (the incision) made by Nicolas, or, as the notary suggested, divine mercy had saved the man. A week later, the court's proctor requested that the patient be summoned, and in his stead, the patient's wife appeared to request that the good doctor be released.[76] Her action validated the conclusion that care had been appropriate and effective and implicitly illustrated that there was no remaining grievance or necessity for restitution. The latter was important because the court sought peace between parties when possible and on occasion awarded monies to injured parties. The case was resolved that day at Vespers.

The court used an expert magister also to examine the proof in a prolonged case involving economic fraud. On 26 January 1487, the court opened a case against Bertomieu Caneneti, an unmarried cleric and merchant trading in the town of Caromb.[77] Bertomieu took an oath to return for the next audience and, after two delays (to extricate him from "harassment" by Caromb's secular legal authorities and to prepare the case), the notary recorded that the sitting judge of Caromb, who appeared cooperative, reported that false scales had been recovered from the cleric's house.[78] The judge of this officiality then ordered that the scales be seized by his curia. Multiple delays ensued until, on 18 May, it was revealed that the cleric had underweight scales and false weights and had used them in his sale of fish to other merchants in Caromb, thereby cheating many people.[79] Under oath, Bertomieu claimed he was unaware of the problem and had used the scales for about six or seven days. He responded to the accusations title by title (and to additional follow-ups by the judge on each

74 ADV B 3334 fol. 136r, 10 May 1488 (Fisc. c. Sayni).

75 ADV B 3334 fol. 136v, 13 May 1488 (Fisc. c. Sayni). See Appendix, Text 2.

76 ADV B 3334 fol. 138v, 17 May 1488 (Fisc. c. Sayni). See Appendix, Text 2.

77 ADV B 3334 fol. 11v, 26 Jan. 1487 (Fisc. c. Sayni).

78 ADV B 3334 fol. 14r, 6 February 1487; fol. 17r, 13 February 1487; and, fol. 28v, 11 April 1487 (Fisc. v. Caneneti). See Appendix, Text 3.

79 ADV B 3334 fol. 43r, 18 May 1487 (Fisc. c. Caneneti). See Appendix, Text 3.

point). The judge warned him to make a formal defense, should he wish to do so, and received his promise to return for the next scheduled audience. After a few more audiences, four witnesses were summoned in May and June, but their testimony was not recorded.[80] All documentation was left for review in October and November.[81] On 14 March 1488, the judge resumed the case, ordering that the scales be checked.[82] Magister Michel Quixote, the scale-master in charge of the regulation of weights in Carpentras, appeared before the notary on 14 April and gave his report under oath.[83] He compared each weight to the city's legal weights and confirmed that the four were legal, the other three were under-weight. Furthermore, one part of the scale was long on one end of the beam, and, in order that it would appear balanced and pass scrutiny, an ounce could be added to the middle of the scale. Under interrogation on 18 May, the merchant confessed that the captured scales indeed were his but continued to claim he did not know they were false. Drawing upon the testimony and confession of ownership, the judge condemned the merchant, whose proctor immediately demanded an appeal.[84]

1.7 Partial Proof

Jurists recognized six varieties of half-proofs that could add up to a full proof, including sworn "deletion," single-witness testimony, flight by the accused, and false statements by the accused.[85] As with full proofs, the role of partial proofs in sentencing is not explicit here, but two cases suggest that two types of partial proofs were considered at Carpentras: false statement and flight. Recall the preliminary questioning of the two brothers, at the opening of this chapter, who were accused of attacking a priest in front of a convent. Their

80 ADV B 3334 fols. 44v, 25 May 1487; 53r, 9 June 1487; 47r, 1 June 1487; 53v., 12 June 1487; 54v, 18 June 1487; 56r, 22 June 1487; 62r, 2 July; 62r, 3 July 1487; 72v, 23 July 1487; 76r, 30 July 1487; 78v, 8 August 1487; 79r, 17 August 1487; and 97r, 29 October 1487 (Fisc. c. Caneneti). At least one of them was excommunicated in July for having failed to appear, further protracting the case.

81 ADV B 3334 fols. 97r, 29 October 1487; 101v, 19 November 1487; and, 129r, 14 March 1488 (Fisc. c. Caneneti).

82 ADV B 3334 fol. 129v, 14 March 1488 (Fisc. c. Caneneti); the commission was renewed on fol. 130v, 28 March 1488 (Fisc. c. Caneneti).

83 ADV B 3334 fol. 132r–132v, 14 April 1488 (Fisc. c. Caneneti).

84 ADV B 3334 fol. 137v, 16 May 1488 (Fisc. c. Caneneti).

85 Brundage, "Proof," 335. The six varies of half-proof were described in Durand, *Speculum iudiciale*, lib. 2, part. 2, *De probationibus*, 628.

false statements laid the foundation for the arrest and initiation of a case, and might have been a viable partial proof. Their duplicity certainly helped removed any qualms about initiating the case, as was suggested by the notary's comment that Cristofor appeared based upon the information received from the temporal officials about his notorious crimes as well as deviations in the depositions of Cristofor and his brother.[86]

Along with lying, fleeing a crime could be construed not only as partial proof but also as an immoral act. On 1 January 1487, the vice proctor fiscal conveyed information to the court about a bloody beating of a nobleman named Ludovic Roverie, a *comitatus* of the rector.[87] Claude Dalphin was accused of violently attacking the victim with stones and a staff in the town of Carpentras in September 1486 with the aid of (unnamed) accomplices. Claude, who was a cleric, merchant, and resident of the town, denied the allegations. He stated that he and Johan Lombardi and some others had sought Ludovic's servant Gaspardi, with whom Claude had quarreled. Claude initially blamed his accomplice Johan for luring and beating the victim. After the victim began to cry out, "Alarm, alarm," Claude fled to his home outside the city. Asked why he fled, Claude responded that the victim had put out a general warning and he feared incarceration, an understandable if illicit reaction, and a risky one given such a well-connected victim. Later, in March 1487, Claude responded to each title of the inquisition: he admitted he threw a stone, though he did not believe it struck the victim, and then fled after the victim cried out.[88] The sitting judge again pressed him about the flight, presumably seeking its motivation, to which Claude simply claimed he wished to avoid arrest.

Unfortunately, the *processus* of criminal cases provides a somewhat impressionistic picture of the use of proof, whether partial or full. One could speculate that the relative rarity of proof by witness, coupled with the tendency towards partial confessions, helped lead to the low rate of sentencing that will be discussed in the Chapter Five.

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86 ADV B 3334 fol. 104v, 28 November 1487 (Fisc. c. Daniel): "*Dominus vicarius auditis premissis actentis variacionibus per dictum Danielem delatum factis adepositione sui fratris* [...] *Dominus vicarius visis informacionibus per dominos temporales receptis ac considerans variacionibus notorie factis per ipsum delatum et eius fratris in eorem depositionibus ipsum delatum iussit carcerari.*"

87 ADV B 3334 fol. 1r–1v, 1 January 1487 (Fisc. c. Dalphin). See Appendix, Text 4.

88 ADV B 3334 fol. 22v–23r, 9 March 1487 (Fisc. c. Dalphin): "*... ad secondam, confitetur proiexisse* [sic; *proiecisse*] *unum lapidem tamen non credit percussisse prout in titulo ponitur ... Interrogatus per dominum locumtenens si auffugerit* [sic] *... civitate dixit quod sic quia tenebat capi per officionarios.*"

1.8 Jurisdictional Interaction among Legal Authorities: Cooperation and Conflict

From the very inception of cases, the court worked with other legal authorities, both secular and ecclesiastical, who provided information, referred cases, and seized and delivered arrested individuals (some of whom were temporarily jailed by them). Interactions among these authorities exhibit primarily cooperation, occasionally conflict, and, more rarely, jurisdictional confusion and complications involved in establishing competency. The officiality and Comtadine authorities tended to cooperate, sometimes despite the efforts of wily defendants. Records like these usually tend to stress conflict because conflicts generated legal processes in reaction, but case after case illustrates the cooperative exchange of information and bodies. Friction arose when civic authorities targeted men whom the court considered clerics, and given the court's generous interpretation of clerical privilege, this is unsurprising. Conflict and confusion also arose when the participants in a crime were mixed in status (clerical and lay) or when multiple legal jurisdictions were involved either because the crime was committed in multiple places or because members of a group of offenders lived in different towns.

Canon and secular laws specified exclusions to clerical privilege primarily based upon the crime, occupation, and lifestyle of the accused.[89] Grave crimes like homicide excluded clerical privilege. Boniface VIII's decretal *At si clerici* clarified that this privilege included clerks who married *cum unica et virgine* if they maintained their habit and tonsure, but excluded all clerics who engaged in dishonest or infamous professions, as well as married clerics who were bigamists.[90] Cleric-merchants might also be exempted.[91] In practice, this privilege could be broad. For example, in both the episcopal and monastic spiritual courts of Lyons studied by Nicole Gonthier, the privilege of this forum was extended routinely to the servants of priests and regulars.[92] This stemmed

89 See Fournier, *Les officialités*, 68–71; Lefebvre-Teillard, *Les officialités*, 89–91; and, Pommeray, 223–24. For a fuller discussion of the evolution of these principles see also Robert Genestal, *Le Priviligium fori, en France du décret de Gratien et à la fin du XIV^e siècle*, 2 vols., Bibliothèque des Hautes Études, Section des Sciences Religieuses (Paris; Leroux, 1921–24) and François Olivier-Martin, *L'Assemblée de Vincennes de 1329 et ses conséquences: Étude sur les conflits entre la juridiction laïque et la juridiction ecclésiastique au XIV^e siècle* (Paris: Picard, 1909).

90 Lefevbre-Teillard, *Les officialités*, 89–91. Note that unmarried clerics were not necessarily expected to wear clerical clothing.

91 Ibid.

92 Gonthier, *Déliquance, justice et société*, 25.

from extended interpretations of *privilegium fori* and canonical principles, particularly Boniface's prohibition of attacks on cardinals and their *familiares*.[93]

In France and England, secular royal and local authorities helped define the exceptions to this rule, and over time, increased qualifications for clerical privilege and exempted more offenses from it.[94] In his study of the development of the officialities in France, Fournier notes that married clerks who committed offenses in the exercise of their functions as royal officers were excluded.[95] Service for the ecclesiastical courts was another matter. At Paris, Léon Pommeray finds that clerics commissioned to serve the officiality in tasks like the delivery of letters (*clerici ad mandata*) were protected under this competency as well.[96] Even if an official of a spiritual court condemned and then ordered the cleric to be degraded from holy orders, the accused was not to be subjected to additional temporal litigation according to the canonical understanding of double jeopardy.[97] By the later middle ages, clerics were denied the benefit for failure to maintain a tonsure, pass literacy tests, or engage in an appropriate occupation.

The officiality of Carpentras extensively applied and aggressively protected its competence *per rationem personae*, claiming the right to adjudicate crimes committed by and against clergy.[98] Barring a few exceptions, the privilege to an ecclesiastical forum was both a right and a requirement of clerics.[99] No homicides were considered, though, which may suggest that they were excluded, but violent attacks and a variety of economic offenses were. Clerks of all stripes

93 Sext. 5.9.5. For more on the implications of this principle see discussion in Helmholz, *Classical Canon Law*, 302–305.

94 See Leona Gabel, *Benefit of Clergy in England in the Late Middle Ages* (New York: Octogon Books, 1928, 1968), 58–61; Gazzaniga, *Léglise du Midi*, esp. 73–80.

95 See Fournier, *Les officialités*, 68–71, and Lefebvre-Teillard, *Les officialités*, 89–91.

96 Pommeray, *L'officialité de Paris*, 223 and 226.

97 Helmholz, *Classical Canon Law*, 286; Lefebvre-Teillard, *Les officialités*, 104; Robert Genestal, *Le privilegium fori en France du décret de Gratien à la fin du XIV^e siècle* (Paris: El Leroux, 1921), 82.

98 Competence by reason of a person's status was not limited to clerks but included competence *miserabiles personae* (usually defined as the weak poor, pilgrims, orphans, children and widows). There is no evidence that this definition of competency was applied in Carpentras, though in one case, the judge decided to waive a surety from a male laborer due to his poverty; see ADV B 3334 fol. 51v, 8 June, 1487 (Fisc. c. German). See Fournier, *Les officialités*, 64–81; Helmholz, *Classical Canon Law*, 116–26; Lefevbre-Teillard, *Les officialités*, 88.

99 See Fournier, *Les officialités*, 66–79; Pommeray, *L'officialité de Paris*, 225.

qualified, whether major or minor, regular or secular, married or not.[100] Those in minor orders practiced a wide variety of professions as notaries, scribes, physicians, tutors, merchants, and butchers. The records do not indicate whether this privilege extended to servants or agents commissioned by ecclesiastical legal authorities: the two attacks upon the servants of ecclesiastics were committed by clerics and we cannot conclude which type of competency applied.[101] It is possible that one accused man's threat to an agent designated by the rector (a cleric) to arrest him might qualify.[102] In such a small diocese with strong institutional interconnectivity among the major towns and churches, local courts may have found it easy to verify clerical status. Or, alternatively, before cases were initiated, the proctor fiscal may have made some effort to define the status of the accused. Only occasionally was clerical status questioned by proctors of this curia.

Sixteen purported clerics lodged at least one complaint each against civic officials in order to establish their identity and defend themselves from temporal legal actions.[103] A proctor representing the court accepted all but two as legitimate. Once clerical status was established, and upon the request of the cleric or his proctor, the judge ordered the notary to draw up letters of inhibition, copies of which were to be kept on hand for the court. Letters confirmed that the cleric was entitled to this status and that his person and goods were

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100 See identifications in Appendix III. For examples of marital status in particular, see: a "*clericus solutus*" on ADV B 3334 fol. 136r, 12 May 1488 (Fisc. c. Barat); a "*clericus coniugatus*" on fol. 164r, 20 October 1488 (Fisc. c. Asson); a cleric "*virginibus coniugator*" on fol. 84v, 5 September 1487 (M. & C. Daniel c. Officials of Pernes); and a "*clericus unica et virgine coniugatus*" on fol. 65r, 11 July 1487 (Fisc. c. Michael).

101 ADV B 3334 fol. 73v, 23 July 1487 (*Denunciatio . . . Pichor*). For an attack on a papal servant, who may have been a cleric himself, further complicating any interpretation, see fol. 96v, 26 October 1487 (Fisc. c. Barber).

102 ADV B 3334 fol. 157v, 25 August 1488 (Fisc. c. de Bourg).

103 ADV B 3334 fol. 123v, 13 February 1488 (Arnaud c. Temporal Officials of Pernes); fol. 13v, 30 January 1487 (Blayni c. Temporal Officials of Pernes); fol. 91r, 5 October 1487 (Botini c. Temporal Officials of Mazan); fol. 10r, 19 January 1487 (Canenti c. Temporal Officials of Caromb) and fol. 28v, 11 April 1487 (Caneneti c. Temporal Officials of Caromb); fol. 8r, 19 January 1487 (J. Clemeti c. Temporal Officials of Carpentras); fol. 5v, 15 January 1487 (Dalphin c. Temporal Officials of Carpentras); fol. 83v, 5 September 1487 (Cristofor and Michael Daniel c. Temporal Officials of Pernes); fol. 10r, 19 January and fol. 55v, 23 August 1487 (C. Marcelli c. Temporal Officials of Caromb); fol. 18v, 16 February 1487 (Juget c. Temporal Officials of Mormoiron); fol 131r, 29 March 1488 (Meyheri c. Temporal Officials of Carpentras); fol. 20v, 1 March 1487 (Ranelli c. Temporal Officials of Mazan); fol. 17v, 13 February (Vadet c. Temporal Officials of Pernes); fol. 90v, 1 October 1487 (Villar c. Temporal Officials of Mazan); fol. 67r, 22 June 1487 (Ybri c. Temporal Officials of Mazan).

protected and, when necessary, demanded the release of the cleric and his goods from custody. In a few cases, proctors requested that letters be sent to temporal officials multiple times, indicating a continuing dispute or bureaucratic confusion; typically this happened in instances of theft and fraud.

At Carpentras, a request for the recognition of clerical status could be made at any time before, during, or after any legal action was taken against the claimant.[104] Six of the sixteen men sought immunity immediately after the officiality initiated a case against them. Ten men complained that they faced harassment from the civic officials of major towns in the diocese (Carpentras, Mazan, Pernes-les-Fountaines, Caromb, and Mormoiron). Note that their pre-emptive claim for immunity did not necessarily lead to any investigation against them by the officiality: nine of those ten men established their status without any evidence that the officiality pursued actions against them. Again, the court's pursuit of justice was not aggressively investigatory: it primarily heard complaints formally brought to it. These promoted procedural suits generally are formulaic and lack any detail about the circumstances behind the requests.

In only two cases did the notary indicate the grounds for the determination and both suggest the court conformed to *At si clerici*.[105] In one case, a man labeled a cleric by status and a merchant by occupation was recognized after he showed that he was tonsured and in residence; in the other, a man simply called a "cleric" was protected because he maintained a habit and tonsure. The court only rejected two requests, and there is no indication here of fraudulent claims, though it is certainly possible. In his work on the law courts of Marseille, Daniel L. Smail notes that those who claimed clerical privilege might draw attention to a tonsure or the ability to read, but given the high rates of literacy in the south, many could attempt to claim benefit of clergy, and hence, demand hearings in church courts and evade secular courts.[106] Claims could be faked, as in a case from 1400 in which a layman was fined for tonsuring himself in order to sue his opponent in an ecclesiastical court.[107]

In only a few instances did civil authorities resist the court's jurisdiction over clerics who sought to protect their privilege to this forum. The two brothers whose interrogation for a notorious, bloody assault on a priest was discussed

104 The same could be said for the archidiaconal court of Paris; see Pommeray, *L'officialité de Paris*, 225–27. The letters of inhibition were also similar in nature. As punishment for failure to abide by the court's orders, a fine was typically demanded.

105 ADV B 3334 fol. 5v, 15 January 1487 (Fisc. c. Dalphin): fol. 21r, 2 March 1487 (Fisc. c. Juget).

106 Smail, *Consumption of Justice*, 197–98.

107 Ibid., 197.

at the opening of this chapter were "harassed" on multiple occasions by temporal authorities after their status was affirmed. The judge released one of the brothers, Cristofor, a married cleric, from jail so that he could provide labor for his elderly father, rendering Cristofor especially vulnerable to temporal authorities. The officiality, which was vigorously pursuing the case, warned the temporal officials four times to desist from harassing Cristofor. The court also had to warn the temporal legal officials of Carpentras to release Claude Dalphin for a similarly notorious and bloody assault under consideration by the officiality.[108] Such resistance to the court's competency was rather rare.

On rare occasion, the court summoned intractable secular authorities. In one instance a "noble" unmarried cleric named Johan Botini appeared before the court on five occasions in an attempt to control the behavior of the civic legal authorities of Mazan.[109] The substance of his quarrel with that court is unknown. Neither they nor their proctors appeared at the first audience on 5 October 1487. The following week, on 12 October, the judge ordered their arrest. Still failing to appear or respond, Johan's proctor requested an order inhibiting the civic officials, who "vexed and disturbed" his client and "through the same hatred," were planning to take his lands. He demanded that the "lord and officials" of Mazan respond to the church court concerning the fines that Johan had suffered.[110]

There were no accusations of the "grave" crimes most likely to trigger secular objections to the use of clerical privilege. From the late 14th century onward, grave crimes, including homicide by ambush, poisoning, abortion, assassination, and brigandage were increasingly claimed by the Parlement of France: royal officials argued that clerical status was lost, *ipso facto*, when they committed such crimes. If the prosecution were successful, the accused received harsh penalties, like execution, or, more rarely, fines. In canon law courts, clerical privilege also could be lost when recidivist clerics were "incorrigible," i.e., those who committed grave crimes thrice and failed to mend their ways despite spiritual sanctions; Chapter Three will discuss the only such example.[111]

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108 ADV B 3334 fol. 8r, 19 January 1487 (*Fisc. imitto Claudio Dalphini c. Officiarios Temporales Carpentoracti*). See fol. 47r, 1 June 1487 (Fisc c. Dalphin) for continuing problems with these authorities.

109 ADV B 3334 fol. 91r, 5 October 1487; fol. 92r, 8 October 1487; fol. 92v, 12 October 1487; fol. 94r, 19 October 1487; fol. 95r, 26 October (Fisc. c. C. Daniel).

110 ADV B 3334 fol. 94r, 19 October 1487 (Fisc. c. Botini): "*. . . proponit quod . . . Dominus Masani* [here, meaning the man in charge of cases in the civil court of Mazan] *. . . vexet et inquietet . . . Johannem Botini clerium solutum et eius odio prosequitur vexat et inquietat . . . suum . . . depasti* [*sic*] *faciens*."

111 Lefebvre-Teillard, *Les officialités*, 106.

The Comtat's central authorities rarely intruded without invitation in either forum of the court, nor did they contest clerical status, and a few cases suggest that they cooperated with the officiality to resolve cases. The highest Comtadine authorities (the rector and local governors) even aided in the arrest of individuals and affirmed the competency of the officiality.[112] A few defendants nevertheless attempted to claim they were under the jurisdiction of higher Comtadine authorities exclusively in order to exploit situations in which there could be jurisdictional confusion. As will be discussed in Chapter Three, the local Augustinian canons claimed the rector, and not the bishop, had authority over them. In the end, those who challenged the competency of this court nevertheless remained under it, sometimes through the support of the Comtat's highest authorities.

The most difficult and complicated case of jurisdictional wrangling revolved around one violent robbery and it illustrates the potential complications posed by legal boundaries and crafty defendants. The theft (allegedly perpetrated by a cleric and laymen) crossed juridical borders, creating challenges for the court. The defendants' attempts to extricate themselves from the officiality's grasp bought them time, but did not stall the case entirely. The case grew from a denunciation made by Dominus Antoni Morin, a canon of Carpentras, on 22 June 1486, against a cleric and a group of laymen.[113] The canon was the rector of the church of Saint Mary of Ansauis, the site of the incident. He discovered that on the previous Wednesday, around the hour of *Ave Marie*, Dominus Antoni Soyrini (a priest and curate of Gigondas), Raimonet Troch (and his sons Phillip and Antoni, Johan Reynard, Bertomieu de Buxo, and others had

112 See above discussions on initiation and arrest. These arrests could extend to the highest level and included arrests in the rector's name. For example, see ADV B 3334 fols. 165r–v, and 166r, 22 October 1488 (Fisc. c. de Murs).

113 ADV B 3334 fol. 57r, 22 June 1487: "*Denunciatio facta per venerabilem virum dominum Antonium Morici canonicum Carpentoracti. Dictus dominus Antonius Morici denunciavit reverendo domino vicario quod die mercurii proxime preterita de nocte circa horam ave marie ad ecclesiam Beate Marie de Ansauis cuius est rector ipse dominus denuncians sita in tempore Bedoini venerunt quidam dominus Antonius Saurini curatus Gigondassii Ramonetus Philipus et Antonius Trochi pater et filii Johannes Raynardi Bartholomeus de Buxo et nonnulli alii iniquitalis filii eorum complices quibus ibidem aplicatis* [sic; *applicatis*] *cum armis invasus fustibus de facto dictam ecclesiam invaserunt certamque gelimarem quantitatem quas tam ex dicto de Ansauis quae Sancti Blasii eccelesiae decimas perceperat vi et violencia tam infra detari furtum rapinam et sacrilegum comittendo* [sic; *committendo*] *et quod penus est quendam Gabrielem Boreli de Bedoino quem ibi decimas tenebat pro coligendo dictas decimas verberarunt super quibus petivit informaciones per eundem dominum vicarium recipi et debitam iusticiam sibi ministrari.*"

forcibly invaded that church, stole from the courtyard some chickens given as tithes, and, in the process, attacked a man named Gabriel Boreli. They then transported the stolen chickens to Mormoiron, where members of the band resided. That day, a case was opened against Johan Reynard, individually, who denied the charges and claimed he had a witness to prove he was not at the scene.[114] He was released from arrest after securing a pledge from his brother Jacme. Five days later, the court cited Jacme Ceard and Arnulpho Bontosio, also of Mormoiron, together, to address their involvement in the offense.[115] So, we have a mixed group committing a crime against the property of the Church and a person serving the Church at an ecclesiastical site.

At his first appearance before the court, the priest Antoni Soyrini made his first tactical parry, claiming that the judge was inhibited from actions against him by the authority of one of the governors of the Comtat.[116] He provided letters sealed by the governor's *dominus consignatori* in support of this claim, and while the grounds of this letter are not specified, it is likely that he believed, like other canons, that he was subject directly to his governor. In response, the judge entrusted the notary to compose letters concerning the matter for the governor. Nevertheless, he arrested Soyrini and handed him over to the custody of city of Carpentras while the jurisdictional competence was weighed. That same day, however, all of the accused were released until competence was established.[117] On 9 July, the canon who had denounced the group returned to announce that the governor had not intended that his inhibitions be used this way (i.e., to release the accused parties from all justice).[118] In a letter, the governor stated the matter should be pursued by the officiality. He reinforced

114 ADV B 3334 fol. 57r and 57v, 22 June 1487 (Fisc. c. Jo. Raynard).

115 ADV B 3334 fol. 60r, 27 June 1487 (Fisc. c. Saurin, R. Troch, P. Troch, A. Troch, Ceard and Bontossio).

116 Ibid. The rector appointed governors who were directly subject to him and who helped him primarily to manage military and economic affairs. See David, *L'organisation administrative, financière et judicaire sous la dominion des papes*, 64–65.

117 Ibid.

118 ADV B 3334 fol. 64v, 9 July 1487 (On behalf of Dominus Antonio Morin). The letter indicated his statements of protection did not cover these actions ("*non intentit quod inhibitiones predictos*") and placed it in the court's hands (*in . . . cuiusdem commissionis dicto domino vicario facto per reverandum dominum gubernatorem requirerit igitur eundem dominum vicarium ut causam fiscalem contra dictos delatos continuet et sibi provideat . . . formatis commissionis*"). The title of next entry affirms this authorization. See ADV B 3334 fol. 64v, 11 July 1487: "*Nova commisisionalis Fisci contra dominum Antonetum Soyrini curatum de Gigundacio*."

this decision by formally granting a "commission" to the officiality, thereby solidifying the court's competency and subverting further attempts to cause jurisdictional confusion or competition. The priest Soyrini continued to challenge the judge and the court, who believed the priest had transported the fowl. At the opening of the case, the priest failed to appear and was excommunicated, despite his proctor's appeal, by the judge who was perhaps now wise to Soyrini's delaying tactics. At the next audience, on 17 July, Soyrini's proctor presented a notice that the case was being submitted as an appeal to the higher tribunal ("*ad apostolos*"), but its details and progress were not recorded.[119]

On 12 July, having been informed that two of the stolen chickens were held by the alleged thief Raimonet Troch, the judge ordered him to return them to the canon or face a penalty of excommunication and a 25 livre fine.[120] Until he did so, Raimonet was to be considered to be under the arrest of the city of Carpentras. An order of arrest also was made against one of his accomplices.[121] Both appealed the order.[122] On 13 July, the judge decided to release them and ordered them to return the chickens by Monday, 17 July.[123] But Monday arrived without the return of the fowl. The canon came to request that the accomplices be held culpable and arrested, but the judge rejected his request and then ordered the notary to deliver a copy of all that had transpired to the governor and placed all the orders into the hands of the notary for his reference.[124] This may reflect the governor's right to intervene in cases that involved multiple jurisdictions or threatened the political or economic stability and integrity of the Comtat. The notary duly presented all the information to the governor who agreed that the men should be detained and rejected any further

119 ADV B 3334 fol. 64v–65r, 11 July 1487 (*Nova commissionalis Fisci c. Dominum Antonium Soyrini curatum de Gigondacio*) and fol. 71r, 17 July 1487 (*Petitio appelationis pro Domino Antonio Soyrini presbytero curato de Gigondacio*).

120 ADV B 3334 fol. 65v–65r, 12 July 1487 (Fisc. c. R. Troch): "*. . . ipsum Trochi detineri iuxta . . . commissionis donec restituerit gelimas per eum . . . sub pena centum.*"

121 ADV B 3334 fol. 66r, 12 July 1487 (Fisc. c. Bontosi).

122 ADV B 3334 fol. 66r, 12 July 1487 (Appeal on behalf of Raimonet Troch and Arnulpho Bontossi). Raimonet even claimed that the governor never intended that they be arrested or detained when he left the matter to be resolved by the official. See, ADV B 3334 fol. 69r, 13 July 1487 (Fisc. c. R. Troch).

123 ADV B 3334 fol. 69v, 13 July 1487 (Fisc. c. R. Troch).

124 ADV B 3334 fol. 69r–70v, 17 July 1487 (Fisc. c. Jo. Raynard and R. Troch). The Official did excommunicate Soyrini for contumacy, whom he believed to have knowingly taken and transported the chickens (the others may have received the chickens without robbing them).

appeals.[125] On 29 July, Troch and Reynard finally agreed that they would return the chickens if they were released and promised absolution.[126] They promised that if they failed, they would provide restitution in grain for the value of the two stolen birds. A marginal note confirms they fulfilled their promise and the officiality apparently dropped the case.

In sum, civic officials did occasionally clash with the court over the adjudication of clerics, and sometimes due to confusion, but other judicial authorities in the Comtat tended to work closely with the court and kept in frequent contact with it. Cooperation among ecclesiastical and Comtadine authorities was facilitated by the carefully knit and well-defined jurisdictional structure of the Comtat, described in the Introduction. Several elements further facilitated cooperation. First, the officiality adhered strictly to the canonical rules of competency (*per rationem personae* and *per rationem materiae*). Though it was jealous of this competency, it was not predatory. Secondly, many of the cases concerned were trivial and not usually politically charged or financially important and did not warrant much attention. Though the judge did not acquiesce to civic authorities, the cases involving the chicken-thieves suggest he readily accepted the participation of high Comtadine authorities.

This cooperation may appear somewhat unusual, as most scholars stress the conflict between officialities with kings, seigneurs, and civic officials, as well as the ever-expanding reduction of the church court's competence, just as Lefebvre-Teillard illustrates for France.[127] But cooperation was hardly unheard of when dealing with bands of violent thieves whose crimes crossed boundaries: Francoise Gasparri's study of crime in Provence and the Comtat suggests that when pursuing heinous crimes, various legal authorities of the church and state worked together in apprehending suspects, acquiring information, and sharing testimony as part of an attempt to convict the leaders of a murdering, thieving gang of brigands.[128] In the end, this court may have accepted a

125 One of them, Johan Raynard, did break his arrest by leaving the city. He claimed that he had to leave in order to appeal an arrest by the temporal officials (presumably the official of his home of Mormoiron), an action he claimed he should be free to do. The official was not sympathetic and simply ordered that his arrest should stand. See ADV B 3334 fol. 73v, 23 July 1487 (Fisc. c. Jo. Raynard).

126 ADV B 3334 fol. 75v–77r, 29 July 1487 and fol. 142r–142v, 2 June 1487 (Fisc c. Jo. Raynard and R. Troch).

127 Lefebvre-Teillard, *Les officialités*, 130–38. Note that there are more mixed pictures, such as that by Donahue, who note a range of interactions (cooperation and compromise, as well as tension, rivalry), particularly in marriage cases. See "Introduction to Select Cases," 97–103.

128 Gasparri, "*Criminalite en Provence*," 169–73.

limited jurisdictional scope, concentrated on disciplining clerics, and, in its civil courts, regulated a wide array of debt and contract cases (discussed in Chapter Four).

1.9 Conclusion

The judge and his court favored a careful adherence to the fullness of legal procedures and protections available: they protected clerical privilege, as well as the rights of the accused to delays and representation. Due to the integrated nature of the Comtat and, perhaps, a legacy of a mostly resolved approach to competency, the legal boundaries of the court were clearly delimited. As long as cited parties obeyed his orders for the most part, the judge rarely moved to a punitive or arbitrary judicial approach. As will be seen in later chapters, his sanctions, resolutions, and punishments demonstrate a soft approach to justice or a respect for longstanding legal protections and for the clergy who composed most of the offenders. His attempts to obtain defenses, luckily for us, lead to added detail in the all too often formulaic nature of daily record-keeping. Ultimately, the court lacked the force that secular courts had and its actions were unlikely to discourage strongly any criminal behavior, so much so that one wonders if that goal was possible or embraced by those who valued the protections accorded by classical canon law more. But, the court also could be dogged in its quest to get the accused parties into the courtroom and tell their stories, have their actions criticized, and, in a few cases, correct them or work towards a resolution of the conflict. The heart of the judge's job was identifying those engaging in criminal acts, ensuring confrontations with them, securing narratives from them, and, when possible, instructing them in order to foster their reintegration as obedient and faithful members of the community. But, from these stories told as defenses, we can form a less speculative view of another set of moral norms – the norms held by those who faced the court as defendants, the topic of the next chapter.

CHAPTER 2

"De verbis ad verbera": Wounded Honor, Interpersonal Violence, and Exculpatory Narratives

2.1 Introduction

On 2 April 1487, at two in the afternoon, a vicious fight broke out on the doorstep of a house on a street in Carpentras that hosted a medieval meat-market ("*carreria Boccarie*"). Damian Moric, a baker, and Johan de la Jon, a married cleric, beat each other within inches of their respective lives. According to the court's proctor, Johan had called Damian a "wood-thief" and had rushed, beaten, and mangled him.[1] The baker held his own: he charged Johan, blocked his path, and, "mad with immoderate violence," landed blow after blow to the head and body of his rival, beating the cleric "lethally", resulting in "massive blood loss."[2] The fight was fueled by events earlier that day. With "perverse intentions," Damian had intended to spring upon Johan's flock and had uttered nasty words, openly and publicly accusing Johan of being a "thief nesting within the body of a man."[3] Furthermore, Damian had threatened to lop off the cleric's shin-bones if he appeared in the field. The proctor of the court labeled Damian a bad and perverse man, whose hostile and quarrelsome nature disturbed the peace in a very public way: simply, Damian provoked others to violence.[4] Unsurprisingly, the proctor recommended a quick censure.

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1 ADV B 3334, fol. 36r, 11 May 1487 (Fisc. c. de laJon): "*Comparavit Bochardi nostri fisci imponens eidem delato quod . . . irruit in quendam Damianum Furnerium . . . laceratis suis . . . letaliter verberavit. Et ulterius . . . deturpavit ipsum duibec larron et aliis turpibus.*"

2 ADV B 3334, fol. 36v, 4 April 1487: "*Delatus diabolice temptacionis inspiramine* [sic] *consultus . . . In magna carreria Boccarie ante domum sine apothecta Rostagni de Minorvilla . . . furibunde cum violencia non modica in probum virum Johannem de laJon clericum cum vinca virgine coniugatum irruit quem cum quaddam burla* [sic] *quam pugno clauso gestabat cumulatis ictibus ad caput et alia sue personae loca letaliter usque maximam sanguinis effusionem verberavit lesit* [sic; *laesit*] *et vulneravit cicatricibus capiti inflictis ac ictuus in multus sue personae locis remanserunt evidenter.*"

3 Ibid., "*Item ulterius non saturatus de premissis prefatus Damianus sed sui perversi propositi ad pecora prosilire intendens die loco et hora predictis paulo ante et post . . . in prefatum de laJon palam et publice multa turpia verba sui boni nominis detractina propallavit* [sic] *et designavit eum larron nichant home.*"

4 Ibid., "*Damianus est vir malus perversusque inicus* [sic; *iniquus*] *Rixosus quietis impariens. Rixas monens et alios provocans et alius talis cuius vita est plurimia correctione digna.*"

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Clearly both were hardly on death's door despite the vivid account: both men were cited and appeared in court, where each claimed he responded to the insults of, and physical challenge by, the other. Johan, the cleric, admitted he called Damian a "wood-thief," but he provided the only legitimate excuse for slander, that his statement was true. Damian's people, he claimed, were plundering the woods, a site from which he had seen Damian exit. He denied having attacked him in any other way. Damian admitted he attacked Johan, but he explained that the drunken Johan had provoked him by insulting him and detracting from his good name. An agitated Damian responded by forcibly blocking Johan's path and hitting him twice in the head, while defending himself from Johan's blows.[5]

This quarrel was fairly representative of those heard in the criminal forum at Carpentras in 1487 and 1488, though the altercation was more protracted and premeditated than most.[6] Like many of the accused parties in the criminal court records, particularly those who were accused of assault, one of the participants was a male cleric in minor orders, though those holding major orders faced accusations almost as often. The fight culminated in a confrontation in a public space in a major town in the diocese, the most common and useful milieu for engaging in and publicizing a dispute. Like many others in our record, Damian was quick to justify his actions as responses to insults and challenges to his honor: pride, as much as self-defense, fueled his violence. From an exchange of hostile and insulting words, it could be a small step to blows, an unsurprising finding that conforms to well-known social norms and practices, norms that were shared, often uncomfortably, by the laity and clergy.

The ubiquity of interpersonal attacks – whether committed by word or deed – troubled moralists, particularly the clergy responsible for pastoral care and the discipline of other clerics. In their effort to control a variety of immoral behaviors, the clergy had several tools at hand: preaching, the confessional, and of course, the legal courts of the Church. Preachers and confessors alike were to discourage hatred and urge parishioners to control their emotions, to check the sin of pride (which led to conflict), and to avoid provoking others in quarrels. Preaching and confessional manuals expounded in detail upon the sins of pride and lust from which wrath and revenge stemmed. They urged

5 ADV B 3334, fol. 36r, 4 April 1487: "*Comparavit delatus . . . confessus fuit eundem Damianum appellavisse* [sic] *larron de boys quia nemus depraedabatur gentibus. et eum ex quo super ipsum se iniexerat* [sic; *iniecerat*] *per camisiam . . . arripuisse cetera negat.*"

6 Only a few other causes indicate a patently pre-existing conflict: they include those against Claude Dalphin, Cristofor Daniel, Johan de Riparia and Paulo Pichor (respectively, ADV B 3334, fol. 1r, 1 January 1487 fol. 103r–103v, 28 November 1487; fol. 24r, 16 March 1487; and, fol. 73v, 23 July 1487.

parishioners to curb their pride and stay clear of the disputes that tended to lead to further sin and uncharitable acts: as a sermon in the 14th-century collection, *Fasciculus Morum*, suggested, all the flock should heed Augustine's warning that "an unruly desire for vengeance easily makes a wrathful man like a magnet."[7] People could not just let things go and be charitable to their neighbors and their anger led both themselves and others to sin.

In their courts, judges, as priests and evaluators of sinful behavior, were guided by the values extolled in moral literature and the rules of canon law. Among the offenses criminalized by the court were insults and any acts of violence involving clerics. Such acts endangered the soul and marred the public peace. And at the most fundamental level, as Anne Lefebvre-Teillard notes, assaults violated the mutual charity expected of Christians.[8] Physical attacks *against* clerics were condemned as acts of sacrilege for which one incurred automatic excommunication, a censure requiring the Pope's absolution.[9] Assaults *by* clerics represented a stain upon the Church's good name and the example it wished to set. And given that the Comtat was a papal state, the failure to protect and discipline its clerical members reflected poorly upon it and could cast doubt on the propriety and effectiveness of its governance and damage its reputation. In its courts, the Church's motive to ensure personal pious self-restraint met its concern for the public weal and possibly its own reputation.

In order to weigh the culpability of the offender, and then determine appropriate correction, the judge considered the nature of these insults and blows, as well as the background behind them. On occasion, when the details or circumstances remained murky, he went to some length to elicit further information. To fulfill his mission, he needed to evaluate the intention and character of the accused, as well as weigh the validity of the latter's actions in a specific context. Even self-defense warranted only a measured response. The stakes could be high and the judge had a great deal of latitude throughout the process, but all cited parties had a chance to defend their actions personally in response to the titles of inquisition drawn up against them. It behooved the accused to present themselves as decent persons, as victims pushed by circumstances and the poor behavior of others.

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7 Siegfried Wenzel, (ed.), *Fasciculus Morum: A Fourteenth Century Preachers Handbook* (Penn State Press, Penn State Press: University Park, PA, 1989), 123.

8 Lefebvre-Teillard, *Les officialités*, 114.

9 For a discussion of this principle and how absolution was attained, see Wolfgang Müller, "Violence et droit canonique: les enseignements de la Pénitencerie apostolique (XIII^{e}–XVI^{e} siècle)" *Revue historique* CCCIC: 4, 771–96.

Defendants and their proctors drew upon very recognizable, culturally legitimized norms. Clergy felt as comfortable as laypeople deploying defenses shaped by secular values and concerns, though in bids to garner sympathy and understanding they sometimes suggested that their actions were appropriate to their religious status. Absent is any statement of contrition or reference to moral literature to explain their sin and personal culpability. Most often, their behavior and defenses are no different than those we would find in a secular legal court. These conflicts suggest how closely the laity and clergy shared in prevailing behavioral norms, and resemble closely the violent acts described in medieval secular courts.[10] Furthermore, one could speculate that the court's treatment of these offenses suggest something of a sympathetic ear to the victims-*cum*-aggressors and their exculpatory tales.

Acts of interpersonal violence (verbal and/or physical attacks) constitute the most common identifiable type of alleged offense in the criminal records at Carpentras (52 identifiable accusations, or about 41 percent of those which could be identified). (See Table 1.) Usually, physical attacks were spontaneous and limited to a single blow, and appear to be the sorts of street fights common to towns, much as Andrew Finch found in the church courts of late medieval Normandy and Jacques Chiffoleau in the courts of the greater Avignon region in the 14th century.[11] A few protracted fights did, however, result in serious injury. Verbal attacks tended to employ the sexual slanders and accusations of thievery typical of late medieval and early modern Europe, whether one looks at Lawrence R. Poos' study of church courts in England, Edward Muir's depiction of feud in Renaissance Italy or James Farr's work on artisan culture in 16th- and 17th-century Dijon.[12] In the competitive economy of honor, these slaps and slanders demanded redress, whether the recipient was lay or clergy.

While marital litigation and sexual regulation often dominate the records of episcopal and archiepiscopal courts, assault cases hardly were rare in the

10 James R. Farr, *Hands of Honor: Artisans and Their World in Dijon, 1550–1650* (Ithaca, NY: Cornell University Press, 1988), 177–95; Edward Muir, *Mad Blood Stirring: Vendetta and Factions in Fruili during the Renaissance* (Baltimore and London: Johns Hopkins University Press, 1993), 102–104.

11 Andrew Finch, "The Nature of Violence in the Middle Ages: an Alternate Perspective," *Historical Research*, 52:173 (1997), 249–50. Finch categorizes only sixty-five of his three-hundred twenty-three assaults and fights as "serious assaults" (20 percent), that is, ones which demonstrate a "lack of restraint" or endangered the lives of the victim ("Violence," 249). Chiffoleau, *Les justices du pape*, 139.

12 Farr, *Hands of Honor*, 177–95; Muir, *Mad Blood Stirring*, 102–104; Lawrence R. Poos, "Sex, Lies and the Church Courts of Pre-Reformation England," *Journal of Interdisciplinary History* 25:4 (1995): 585–607.

records. In France and England, the lower archidiaconal and abbatial courts typically dealt with offenses involving verbal and physical violence. Though less so than sexual offenses, accusations of violence were fairly common in abbatial courts, as was the case in Paris and Cerisy-la-Floret in Normandy.[13] In both the abbatial and diocesan courts of Lyons the same could be said.[14] Caseloads could vary regardless of the region, as demonstrated by the possibly unusual northern French diocesan court of Bayeux, where accusations of theft were most frequent, closely followed by homicide, then assault.[15] In southern French regions the picture is less clear, but in the diocese of Marseille the majority of accusations involved clerics accused of violence, but unlike in Carpentras, also included accusations of homicide.[16] Turning to England, defamation cases (verbal assault) do not comprise a large part of the caseload, but nonetheless, hundreds of these cases were heard in the 15th century, mostly in lower courts.[17] While laypeople slandered one another in Poos' study, almost all of the accusations at Carpentras were made against clerics.

While the criminal records offer great detail in some cases, other entries are sparse or terse, a characteristic that renders this study necessarily impressionistic in some ways, but still highly suggestive of both the legal and social culture in which the court operated. This chapter will use them to explore the officiality's role in regulating violence, the nature of the violent attacks it considered, and the narratives given by defendants and the court's proctors explaining these fights. Most of the attacks were spontaneous and committed on the streets of the largest towns of the diocese by the lower clergy and, though sometimes severe enough to shed blood, were minor scuffles. Clerical privilege shielded them from secular prosecution, no matter how "secular" their livelihood, lifestyle, or devotion to the local honor culture was: maintaining a tonsure was enough to maintain their privilege. Threats to one's person, honor, or economic welfare led these clerics to retaliate, or so they claimed in defenses that cast themselves as victims behaving in a socially expected manner. In a few cases, the court clearly caught the conflicts just as they were

13 Pommeray, *L'officialité archdiaconale de Paris*, 223–25; Finch, "The Nature of Violence," 267–68. Finch's work is one of the few statistical studies on violence in church courts. If we add the total number of assaults and fights Finch found for the 13th and 14th centuries, they account for about 36 percent of the total caseload; fornication and other sex crimes still far exceed them.

14 Gonthier, *Délinquance, justice et société*, 22–29.

15 Neveux, "Les Marginaux," 30.

16 Smail, *Consumption of Justice*, 41.

17 Poos, "Sex, Lies, and the Church Courts," 585–87. Poos concludes that sexual slurs were hurled against women, while accusations of thievery were leveled against men (594–95).

expanding or identified offenders as public menaces and it is in such instances the court's attention was most acute and prolonged.

2.2 Law and Legal Practice

As in any case, the status of the criminal or the nature and site of the crime helped dictate competency. When clerics were victims, the law was clear: those who "laid violent hands upon a cleric" committed a serious offense and were subject to a *latae sententiae* excommunication.[18] The Second Lateran Council of 1139 (*privilegium canonis*) prohibited violence against the clergy, as did Gratian's *Decretum*: "*Si quis suadente diabolo huius sacrilegii vicium incurrerit quod in clericum vel monachum violentas manus iniecerit, anathematis vinculo subiaceat, et nullus episcoporum illum presumat absolvere*."[19] Legal scholars, then and now, usually refer to the canon as "*Si quis suadente*" *or* "*privilegium canonis.*"

Richard H. Helmholz notes that *Si quis suadente* left room for interpretation, which led to questioning and expansion.[20] For example, should it cover attacks on clerical agents or attacks using unconventional weapons (rather than the vague "violent hands" described by the canon)? Opinion favored expansive coverage of automatic excommunication in most cases. Self-defense applied with moderate force to repel an attack (*vim vi repellere*) was one of the most significant exclusions. Basing his argument primarily on the English evidence, Helmholz concludes that self-defense was the most frequent exclusion claimed in court under this canon. Drawing from the declaratory letters of the Papal Penitentiary, Wolfgang Mueller comes to the same conclusion for the homicides

18 It was necessary to obtain a papal mandate at the Apostolic See for absolution from this *ipso facto* sentence of excommunication (barring special commissions). From the 13th century onward the Papal Penitentiary served as a tribunal where one could obtain absolution from a *sententia canonis* meted out for acts *immissio manuum*. See Müller, "*Violence et droit canonique*," 771–81 and Vodola, *Excommunication*, 28–35.

19 Gratian, *Decretum*, C. 17, q.4, c. 29. For a further discussion of the canonical law on assault, see Donahue, "Introduction," in *Select Cases from Canterbury*, 93–4. He addresses the uniqueness of the English jurisdictional landscape, where a clerk could seek damages in common law courts by an action of trespass. For exceptions and a prolonged discussion about the automatic censure of excommunication for this offense, see Helmholz, *Classical Canon Law*, 383–92.

20 Helmholz, *Classical Canon Law*, 386–89.

it heard.[21] At Carpentras, a few confessions do appear to be grounded in attempts to claim self-defense.

The application of auto-excommunication was subject to questioning and, in practice, the rigors of a legal process to establish proof of the attack. Elisabeth Vodola notes that several important early canonists, including Gratian, challenged the very notion of excommunication *latae sententiae*, but it came to be accepted, particularly after Huguccio, the preeminent commentator on the *Decretum*, defended it.[22] In his study of the abbatial court of Paris, Léon Pommeray concludes that in the 15th century, excommunication *latae sententiae* was made only after the facts were proven and the sentence pronounced. At Carpentras, there is no unequivocal evidence of auto-excommunication. The phrase does not appear in the records, nor are there indications that anyone sought absolution for it. The proctor fiscal requested that the judge excommunicate three men accused of acts of violence; that he felt the need to do so may simply reflect a habit of formally demanding an expected legal redress.[23] The notary failed to record any response to these requests.

Legal norms concerning insults or defamation were more complex. Verbal attacks, or insults, constituted an injury in Roman law, but canon law slowly articulated its own working definition of the moral offense of defamation. Helmholz carefully outlines the development of the canon law in this area.[24] In the course of developing other areas of the law, Gratian's *Decretum* supported the principle that it was not justifiable to accuse someone publicly of a crime if one could not prove the accusation's truth. Roman law, on the other hand, contained a broad definition of this injury as an abuse or intentional insult that was likely to injure one's reputation or bring contempt upon the

21 Mueller, "Violence et droit canonique," 786.

22 Vodola, *Excommunication*, 31–32. She supports her argument with Hugguccio, Sum. C.11 q.3 c.41, v. *Non poterint*.

23 ADV B 3334 fol. 36v, 2 May 1487 (Fisc. c. Moric); fol. 12r, 26 January 1487 (Fisc. c. Pauli); fol. 24r, 16 May 1487 (Fisc. c. de Riparia).

24 The following paragraph summarizes Helmholz's fine treatment of the subject. For a fuller discussion, including the phrasing in the canon law, see Helmholz, "Introduction," *Select Defamation Cases*, xvi–xvii. He illustrates the uncertainty of the canonists' treatment of slander. Some canonists claimed the courts could only deal with offenses by the clergy, while others opened the jurisdiction to lay people. Suggested penalties ranged from whipping to *lex talionis*. He further emphasizes the diversity of local custom, particularly the English legal tradition concerning verbal assault, as set in *Auctoritate dei patris* by Constitution of the Council of Oxford, which stipulated that the only defense for slander was that the statement accused the receiver of a crime which the latter truly had committed.

receiver. This definition did not restrict the slander to accusations of crime; the only requisite was an intent to harm one's reputation. In a decretal, Gregory IX exhorted all to provide satisfaction for any injury, including verbal injuries, a statement which supported the Roman law notion of injury. And ignorance of the injury was no excuse. By the 13th century, Henry of Segusio (commonly known as Hostiensis) stated that one could be held for injury and money damages if one said or did anything to lessen the reputation of another. Later, in the 14th century, the canonist Johannes Andreae considered the injury to one's good name a serious one, much like a physical attack. While canon law did not adopt the Roman law of actions, it did incorporate the idea that words as well as blows could do actionable harm for which satisfaction should be made. Provocation, however, could mitigate the severity of the punishment in any attack. We might also speculate that insult – by either party in a conflict – violated a basic code of conduct of charity among the Christian community.

Throughout the records of Carpentras, we find resonances of this jurisprudence, as well as social norms about interpersonal violence. The court appeared to treat both violent attacks and insults as criminal acts. The phrasing of *Si quis suadente* is preserved in some of these cases, and, in one case, receives explicit mention, a fact worthy of note as it was fairly rare for proctors to refer to specific laws in either criminal or civil cases.[25] In five criminal cases, elements of the phrase "laying of violent hands" occurs (*violentas manus iniecerit*).[26] Recall the fight at the opening of the chapter: the proctor of the court asserted that the baker had violated the canon and provincial statutes through his use of violent hands against a cleric. He commented that the baker acted furiously or madly with immoderate violence in the fight, possibly as a preemptive rejection of one of the few legal exceptions to it that allowed reasonable self-defense (*vim vi repellere*).[27] Additionally, he recognized that the baker, through an insult suggesting a crime, had publicly smeared the cleric's good name, evoking norms of what constituted a verbal injury by law.

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25 ADV B 3334 fol. 12r, 26 January 1487 (Fisc. c. Pauli), "*in Aymonem manus iniexit violentas . . . in penis iuris et canonicis si quis suadente*."

26 ADV B fol. 24r, 16 March 1487 (Fisc. c. de Riparia), "*in . . . dominum Claudium Guiffredi priorem . . . manus iniessit* [sic; *iniecit*] *violentas*"; fol. 11v, 26 January 1487 (Fisc. c. de Sal), "*delatus manus imposuit violenter*"; fol. 36v, 2 May 1487 (Fisc. c. Moric), "*eidem delato . . . quod licet utroque canone ac statutoribus provincialum dispositione omnes et quisquam manus violentas in personam clerici*"; fol. 80v, 23 August 1487 (Denunciation by the Fisc. c. Roys), "*Roys . . . eundem Durandi clericum fuit agressus super quo manus impositis violentis*"; fol. 25r, 22 March 1487 (Fisc. c. Scoferi): "*eidem delato . . . manus violentas iniexit in dominum Johannem Avianeri presbiterum*."

27 ADV B 3334 fol. 36v, 2 May 1487 (Fisc. c. Moric): "*furibunde cum violencia non modica*."

Verbal and physical attacks like these will be treated together below in order to best reflect the nature of the evidence, the law, and the social logic behind the conflicts. The notary did not organize or label cases by type, nor did he list charges. Rather, he recorded accusations, often embedding them in a narrative of the events involved. Both forms of attacks were legal injuries and shared a social logic and language (one could "throw" an insult or a punch). Witnesses in Marseille, for instance, drew little distinction between the two according to Daniel L. Smail.[28] Though the court punished acts of violence more severely and ordered higher fines for their commission, it seemed to construe both words and blows as forms of attacks. And, both shared a common trigger in our narratives: a perceived threat to one's honor or resources. Both types of attack were weapons in the contests of honor and the publicity of that honor.

The historiography on reputation and defamation indicates how much words were perceived as wounds to one's honor, a valued commodity. The use of violence by word and wound – and other expressions of hatred – was a social practice strategically employed at all levels of society to integrate groups, establish hierarchies, and maintain one's place in local society.[29] Insults and violent attack also shared a similar language, linguistically marking their shared social functions. One was thought to be "attacked" or "offended" by words as much as wounds. Slanderers never simply *said* something; they hurled their offensive remarks much as they projected a blow.[30] As the proctor fiscal and his aides state on two occasions, simply, no one should offend by word or deed.[31] And,

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28 Smail, *Consumption of Justice*, 128–29.

29 For a summary of the social utility of honor, publicized hatreds and violence, see Smail, "Hatred as a Social Institution in Late-Medieval Society," *Speculum* 76:1 (2001) 93–4. Also see Daniel R. Lesnick's work on verbal assault in secular courts, "Insults and Threats in Medieval Todi," *Journal of Medieval History* 17:1 (1991). Violence continued to have these functions in the early modern era: see Farr, *Hands of Honor*, 177–95. For a summary of early modern literature on the topic, see Julius R. Ruff, *Violence in Early Modern Europe 1500–1800* (Cambridge: Cambridge University Press, 2001), 75–87. The connection of violence, honor and competitive social displays also pre-dates the medieval period; for example, see David Cohen, *Law, Violence and Community in Classical Athens* (Cambridge: Cambridge University Press, 1995).

30 One might object that these patterns of usage are simply conventional or arise from the linguistic limitations of Latin, a language notorious for the re-purposing of words, especially verbs. However, Romans shared a notion of words as weapons in disputes and this usage may have been maintained because it reflected social realities. Furthermore, the notaries made the choice to use certain terms where others would have sufficed.

31 ADV B 3334 fol. 8v, 19 January 1487 (Fisc. c. de Gigondas): "*Comparavit Rostagni imponens eidem quod nemini liceat aliquem verbo nec facto offendere.*"

in one instance in which a cleric was attacked, the vice proctor added that this ideal was affirmed by canon and statute.[32]

2.3 The Combatants and the Severity and Sites of the Attacks

In the majority of the accusations, clerics attacked laymen and laywomen (those with no recorded clerical identity). Most of these clerics held minor orders. Laymen who were accused of attacking clerics or their servants were the second most common assailant: they came from a variety of occupations and status groups, from laborers to a nobleman, and resided in the two largest towns, Carpentras or Mazan; and, were involved in local disturbances in their hometown. The majority of those cited faced the court as individuals accused of an isolated attack on another person or persons, while only a small minority were charged as participants in a group, a finding similar to those for the abbatial courts in Paris and Normandy.[33]

Most victims lacked any recorded clerical status and were more diverse in status than the assailants. As with the accused, in a few instances, the victims of verbal attacks were part of group, typically corporate groups like the civic counsel of Carpentras, the "Jews of Carpentras" and the governors of the Comtat (the pope, his regent, and the bishop's curia). Women or Jews are notable among the victims, though none were accused of an attack.[34] Based on studies of other ecclesiastical and secular courts, this is surprising, as we might expect to see laywomen as both victims *and* aggressors; this may reflect a limit to the court's competency or interest. Carpentras was the most typically recorded residence of victims, but the notary recorded their residency poorly, probably because they were not subject to the citations that demanded that information at the initiation of a case.

32 ADV B 3334 fol. 36v, 4 May 1487 (Fisc. c. Moric). See transcription in note 26, above.

33 Finch, "The Nature of Violence," 255; Pommeray, *L'officialité de Paris*, 223. Pommeray concludes that at Paris, the court almost always pursued clerics for individual acts of assault and battery ("*coups et blessures*").

34 Note that cloistered women were not prosecuted in church court. Women do not appear as aggressors in these records; possibly none attacked clerics or a reportage or disciplinary bias existed. Women hardly eschewed such behavior based upon studies of both ecclesiastical courts, see, for instance, Poos, "Sex, Lies and the Church Courts," 585–607.

In a small number of attacks both parties lacked any clerical identity. While weak recording habits could be at play, the notaries recognized the legally-significant clerical status of individuals quite consistently across the notarial records considered for this period. The court may have cited the unidentified laypeople as part of a group that included clergy, as well. All but one attack between two individuals without a recorded clerical identity were physical. In general, the court did not appear to hear cases over defamation (verbal attacks) between laypeople. The notary may have failed to indicate that the location of the attack placed it under the court's competency, but this seems unlikely given his habit of noting locations, whether they were churches, businesses, homes, warehouses, fields, urban streets, or brothels. Most cases that did not involve clerics quickly disappear from the records, suggesting that the court might have dropped them or referred them to the appropriate court.

Canonists weighed the gravity of the attack and appropriate type of punishment based upon the severity of the injury, the type of weapon used to inflict it, the site and time of the attack, and the personal status of the parties. These were the sorts of facts that guided the hierarchy of fines found elsewhere.[35] At Carpentras, the notary duly recorded the locations, times, weapons, and wounds, and also stated when assailants threw their victims to the ground, possibly recognizing of the role of humiliation as well as force. Most physical attacks were moderate and spontaneous, like a hit or a slap. In only about 28 percent of the alleged physical attacks or threatened physical attacks (thirty incidents) did the notary record the use of weapons. Severe injury – massive blood loss or "lethal" wounds – similarly was not especially common (25 percent of the incidents).[36] Slightly more common than bloody attacks were those which involved "many blows" or the striking of one's victim to the ground (together recorded in 28 percent of the physical attacks).[37]

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35 Finch, "The Nature of Violence," 259–62. For a general treatment of the hierarchy of secular fines based upon severity, see also Trevor Dean, *Crime In Medieval Europe 1200–1550* (London: Longman, 2001), 130–34; For the example of Marseille, see Smail, *Consumption of Justice*, 186.

36 For those cases recording serious injury without mentioning a weapon, see ADV B 3334: fol. 36v, 2 May 1487 (Fisc c. Moric); fol. 103r, 28 November 1487 (Fisc c. Daniel); fol. 15r, 7 February, 1487 (Fisc c. Marcelli); fol. 25r, 22 March 1487 (Fisc. c. Scoferri). For serious injuries with a stated weapon, see fol. 48v, 1 June 1487 (Fisc c. Corpi); fol. (Fisc c. Dalphin); fol. 15r, 7 February 1487 (Fisc. c. Clemeti, C.); and fol. 8v, 19 January 1487 (Fisc c. de Gigondas).

37 For incidents in which the victim allegedly was knocked to the ground, see ADV B 3334 fol. 64r, July 1487 (Fisc. c. Motet) and fol. 4v, 15 January 1487 (Fisc. c. Briac). For victims knocked to grounds and receiving multiple wounds, see fol. 145v, 2 July 1488 (Fisc. c.

Based on this, and a host of other objections, one might question James Given's suggestion that the "ubiquitous presence of knives" spurred a high incidence of violence.[38] Blunt weapons, like staves, sticks, and stones, were just as handy, and more commonly employed, than edged ones. The locations of the crimes do not seem to have conditioned which type of weapons assailants used. As all the accused were male, we cannot make a comparison of weapon choices by sex, but may question the notion that edged weapons were "men's weapons."[39] Clerics likely favored blunt weapons in an attempt to avoid drawing blood, an offense prohibited in the 13th century by the Fourth Lateran Council and reiterated over the centuries.

The phrase "a great effusion of blood," translated in the fight that opened this chapter as "massive blood loss" recurs and was a standard legal one that indicated an elevated level of violence, rather than a careful forensic description of wounds. Mark Meyerson rightly points out that this phrase, whether used in vernacular literature or in legal courts, "was the shorthand often used throughout medieval Europe to describe the effects of immoderate interpersonal violence [. . .] the modern interpreter of court records is often left guessing whether such great outpourings of blood actually took place."[40] The phrase was employed in four incidents at Carpentras. Extrapolating from Meyerson, we could read the "lethal" blows in these records as immoderate and only potentially mortal: as several cases illustrate, the victims of "lethal" wounds had the remarkable ability of appearing in court on the very same day or not too long after that. Though the language was formulaic, it was code for a grave

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Peysoneri) and fol. 148r, 16 July 1488 (Fisc. c. Badet). For incidents in which "many blows" were alleged, see fol. 52r, 8 June 1487 (Fisc. c. de Fonte); fol. 162r, 10 October 1488 (Fisc. c. de Bonoloco); fol. 14v, 6 February 1487 (Fisc. c. Brajahon); and fol. 24r, 16 May 1487 (Fisc c. de Riparia). For an incident alleging many blows with a weapon, including those to the victim's head, see fol. 87v, 15 September 1487 (Fisc. c. Brunet).

38 James Given, *Society and Homicide in Thirteenth-Century England* (Stanford, CA: Stanford University Press, 1977), 188–212. He admits that the presence of knives did not ensure their use: drunkenness and cultural codes encouraging certain forms of violence were key factors in the choice to wield those knives. At Carpentras, alcohol consumption is mentioned in one case; as discussed at the opening of the chapter, the baker accused his adversary of being drunk [ADV B 3334 fol. 36v, 2 May 1487 (Fisc c. Moric)]. Claude Gauvard finds that drunkenness rarely was used as an excuse, and far less often than anger was. See 'De grace especial': *Crime, état et société en France a la fin du moyen âge* 2 vols. (Paris: Publications de la Sorbonne, 1991), 430–36.

39 Smail, *Consumption of Justice*, 120, 129.

40 Mark D. Meyerson, Daniel Thiery, and Oren Falk, (eds.), "Introduction," in *'A Great Effusion of Blood'? Interpreting Medieval Violence* (Toronto: University of Toronto Press, 2004), 3.

offense and proctors used it to influence the judge as he weighed the character of a defendant, whether to place him in jail during the trial, and, ultimately, how to punish him. Certainly, to deploy the phrase pre-emptively undermined a defendant's claim to a moderate act of self-defense. For added force, the vice proctor also drew from a host of colorful adjectives, appropriate to the stereotypical criminal character were deployed along with this phrase to portray the viciousness of the person and incident, describing aggressors as "diabolic" or characterizing attacks as "immoderate," inflicted "furiously" or "wickedly."[41]

Most incidents, severe and not, occurred on the streets of the two biggest towns, Carpentras or neighboring Mazan, reflecting either the socially dense and bustling nature of urban life or a reporting bias, as the court may have been made aware of these more often and was more sensitive to well-publicized fights. Four attacks transpired in a church, an obviously aggravating element, especially when they occurred during services attended by respected members of the congregation who were offended by the acts (and whose names the notary recorded). Three of the attacks on city streets occurred in front of brothels.[42] We should expect to find clergy at such sites; Jacques Rossiaud found that clergy made up 20 percent of the clientele of all private bordellos and bathhouses at Dijon. He notes that clergy, named and listed as residents of the city, were present in all cases of procuration and brawling near brothels and bathhouses.[43] While it was hardly unusual for clergy to visit brothels, one attack at Carpentras may have been prompted by the discomfort of being discovered as a customer of one, or at least one begrudging payment for services. At noon, on 26 December 1487, Dominus Ricard Barber, a priest from Pernes-les-Fountaines, approached a brothel and a woman attempted to press him for payment of past services. At that moment, a papal servant, Johan Triboleti, happened upon him. Holding back his satchel – from which he was poised to pay – Ricard beat Johan.[44] One is left to wonder whether a snide comment, judgment, or smirk incited Ricard. Attacks resulting in the most serious

41 See the case against Damian Moric: ADV B 3334 fol. 36v, 2 May 1487 (Fisc. c. Moric). Note that the proctor comments that Damian reacted in such a way: "*. . . furibunde cum violencia non modica*."

42 These include the cases opened against Ricard Barber, Johan Brunet, Stephan Corpi: ADV B 3334 fol. 96v, 26 October 1487 (Fisc. c. Barber); fol. 87v, 5 September 1487 (Fisc. c. Brunet); and, fol. 48v, 1 June 1487 (Fisc. c. Corpi).

43 Jacques Rossiaud, *Medieval Prostitution*, trans. Lydia G. Cochrane (Oxford and New York: Basil Blackwell, 1988), 41.

44 The record states Ricard confessed, but no other reply was recorded. After he promised to find someone to act as a guarantor for him and return to the court, he disappeared from the record. ADV B 3334 fol. 96v, 26 October 1487 (Fisc. c. Barber).

injuries were more likely to occur at Carpentras when it was dark, though, otherwise, night-time attacks were no more common than those during the day.

While much of the court's daily business involved disciplining clerics for spontaneous fights, it was most activist when disorders were especially heinous, public, or expanding. Shared enmities bound groups of clerics (and laypeople) in feuds, and then in trials and in mutual aid as guarantors for bail. Below, spontaneous fights and expanding feuds will be considered, with special attention to those quarrels upon which the court expended the most effort, time and paper-work: often the most public and bloody crimes were the best-documented, which is likely not an accident, but rather a guide to the court's interest in them. They also reveal much about the defensive tactics pursued and facilitated by the court.

2.4 Telling the Tale: Court Narratives and Exculpatory Tactics

Almost half the defendants appeared in court to explain their actions and tell their stories. Court narratives included descriptions of the events by the defendant or their proctors, the proctor fiscal (or his representatives), the *clavaire*, and even the judge. Typically, the court's proctors summarized the titles against the accused in the first phase of the trial. Just as in secular Roman law courts, those cited in a church court were expected to obey the court's citations and respond to the titles of accusations in person. Canon law, like Roman law, did permit abbreviated procedures, lower standards of proof for initiating cases, and wider judicial discretion in the criminal forum; summary rulings were possible.[45] Therefore, authors like John Langbein argue that the process was heavily biased against defendants.[46] While many canonists asserted that the accused could be denied a formal defense in criminal cases, others disagreed, as discussed in Chapter One.[47] At Carpentras, the process not only granted defendants ample chance to present defenses themselves or with the aid of a

45 Brundage, *Medieval Canon Law*, 146–50.

46 John Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime* (Chicago: Chicago University Press, 1977).

47 Brundage, *Canon Law*, 149. His conclusion is based primarily upon the following authorities: Johannes Teutonicus, Glos. Ord. to C. 2 q. 6 c. 40 *expolatores* and C. 3 q. 6 c. 10 v. *de expusis*; and, Bernard of Parma, *Glos. ord.* to X 5.1.15 v. *criminale*. Brundage implies that this denial was routinely applied in England, but does not comment on the continent. Versus: Panormitanus, "*Practica*," c. 150, p. 30: "*Advocatus inquisiti quibus modis prospicere possit suo clientulo*." For a discussion of this passage, see Esmein, *Criminal Procedure*, 91.

proctor, but also encouraged them to do so. Like the baker and the cleric fighting above, others vigorously seized this opportunity to spin the story in their favor, and in both their formal defenses and interrogations, transformed themselves into victims while simultaneously smearing their enemies. In several cases, the judge asked the defendant whether he had been provoked, thereby facilitating exculpatory tales.

One might imagine that defendants justified their actions according to recognizable norms. Given that this was a church court, and many of the defendants were clerics, we might assume that the accused used Christian moral tropes and stressed their contrition. Not so. Defense strategies included one or two recurring tactics. First, the accused denied the severity of the assault, no doubt to stress that their actions had not been "immoderate." Second, defendants sought to transform themselves into victims provoked by a dishonor, insult, or act of violence. Cries of wounded honor – often uttered by clerics – permeate the records. And, when we think about it, this should not surprise us: as Patricia Cullum argues, clerical gender identity was fragile and acquired late in life, encouraging clerics to prove themselves as "real men" through sex and violence.[48] Furthermore, many of the clerics disciplined by the courts maintained rather secular lifestyles, engaging in notarial work and mercantile endeavors.

How do we understand these accounts? In *Fiction in the Archives*, Natalie Zemon Davis emphasizes that legal records were carefully crafted narratives with their own genre rules and target audiences. In the pardon letters she studies, defendants sought to tell good stories, account for motives, and make sense of events. A letter of remission was "part judicial supplication to persuade king and courts, a historical account of one's past actions, and a story. In all three there was a role for crafting and shaping." These narratives ultimately provided access to popular mentalities.[49] This approach can be extended beyond pardon letters. Defenses were meant to be believable, place the defendant in as positive a light as possible, and influence the judge and community. To establish culpability, judges considered provocation, deliberation, mitigating circumstances, and the emotional state of the accused – all elements that could figure in the tales told in courts. What was considered provocative or mitigating might vary by audience, but judges, whether secular or ecclesiastical, king or priest, weighed character and intent. Along with intent, ecclesiastical judges

48 Patricia Cullum, "Clergy, Masculinity and Transgression in Late Medieval England," in *Masculinity in Medieval Europe*, (ed.) D.M. Hadley (London: Longman, 1999), 178–90.

49 Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987), 3–5.

weighed "inner guilt," the second foundation of a willful moral act, before they made their judgements. At a minimum, they needed to understand the circumstances surrounding, and motives behind, the act: as Nicole Gonthier suggested for Lyons, these were weighed in determining the type and severity of punishment (this notion will be explored more thoroughly in Chapter Five).[50]

Judges measured the character of individuals and their general behavior in the community. In her study of the 15th-century diocesan court of Troyes, Christelle Walravens illustrates that the most aggressive prosecution and punishment targeted particularly intransigent, violent personalities – known troublemakers whose general behavior in the town had become particularly offensive and whose correction would serve as an example to others.[51] In the fight discussed at the outset of this chapter, for instance, the proctor's description of the baker Damian suggests that this court did indeed consider how the character of the accused affected the community and deserved special censure. Defendants, then, often needed to deploy narratives to defend both their actions and character, refuting the tale in the accusation.

At Carpentras, mercy might have been expected by most first-time offenders with compelling stories that established a credible defense of their actions and character. Certainly, the procedural norms, and as will be seen later, the rarity of serious punishment, suggest that the judge often acted as a protector who was quick to offer admonitions and pastoral care but slow to punish and limited in his disciplinary tools. Additionally, the absolution, rehabilitation, and reintegration of the wayward were among the mandates of ecclesiastical courts, as the public counterpart of the private confessional.[52] Before resorting to punishment, judges, as priests, should have admonished and counseled the sinner, as was encouraged in Matthew 18:15–22.

The judge seemed determined to get explanations and often probed the emotional states of defendants, inquired into whether they understood the Church's expectations of them, and asked defendants whether they had been provoked. This approach guided defendants to shape their answers well and facilitated exculpatory tales.[53] While there is little explicit indication of how the judge figured intent and character into his decisions, a few of his sentences

50 Gonthier, *Délinquance, justice et société*, 33.

51 Walravens, "*Insultes, blasphemes ou hérésie*," 494, 500.

52 This judicial philosophy was illustrated in practice, especially through the widespread practice of degradation of orders and purgation in England, according to McHardy, in "Church Courts and Criminous Clerks," 182–83.

53 For example: ADV B 3334 fol. 12v, 26 January 1487 (Fisc. c. Pauli).

indicate that he considered the defenses, as he did in his condemnation of Michel Briac, who offered no valid defense or justification.[54]

The accused parties used legitimizing strategies that aimed at softer punishment and possibly a re-affirmation of their *fama* in their community. The savvy defendant cast his victim as worthy of reproach, even legal censure; in some instances, this may have helped spur legal action against an enemy, and thereby expanded the attack, in a sense.[55] In the church courts, then, defendants, and the legal professionals who served as their proctors, also engaged in similar rhetorical tactics as those seen before secular courts. They acted like the professional advocates of the 15th-century Parlement of Toulouse, who, as Jean-Louis Gazzaniga argues, having been nourished by legal theory, actively sought to discredit their adversaries by pointing out their faults and errors.[56] We can speculate that even when defendants spoke for themselves, they had knowledgeable coaches, or this social language simply reflected their life experiences.

Defendants also may have been tailoring their stories to a larger audience. Often, they claimed they were responding to attacks upon their persons and honor. These stories had the potential to travel beyond the court: the proceedings were occasionally outdoors, a flock of court functionaries waited in the wings, and witnesses were close at hand. Court summons would have already whetted local curiosity. Many assailants defended their honor, the maintenance of which extended into and beyond the courtroom. As Smail concluded for the secular courts of 14th-century Marseille, participants used the courts as a venue to shape perceptions of their honor and to continue disputes by

54 ADV B 3334 fol. 4v, 15 January 1487 (Fisc. c. Briac): "*Nichil pro parte ipsius Michaelis . . . saltim validum deductum extitisse nec justificatum.*"

55 E.g., the case against the victim Astorg de Petra, discussed in the following chapter. His relationships with cloistered women came into question again after his purported assailant, Cristofor Daniel, appeared in court. Cristofor had attacked Astorg outside the monastery where the latter was illegally residing with the women; the event certainly renewed attention to Astorg's continuing misdeeds. See cases opened versus Cristofor [(ADV B 3334 fol. 103r, 28 November 1487 (Fisc. c. Daniel)] and Astorg [(fol. 11r, 17 December 1487 (Fisc. c. de Petra)]. Also, further crimes may have been attributed to Damian Moric as a result of statements in court by assailants [(ADV B 3334 fol. 36r–36v, 4 April 1487 (Fisc. c. Moric)] and to the prior Claude Guiffredi, who had been entangled in court proceedings before warning the court of the activities of the canons under his care; see ADV B 3334 fol. 24r, 19 March 1487 (*Denunciatio*).

56 Paul Ourliac, "Préface," in *L'Église du Midi a la fin du règne de Charles VII* (*144–1461*), i.

telling tales about their victims.[57] Honor was a public commodity that needed constant reinforcement in the streets and in court. The records at Carpentras illustrates that both clerics and laypeople were eager to compete for honor and redress attack upon it.

By canon law, the only fully legitimate and valid defense for an attack was self-defense, using moderate force. Unsurprisingly, this was the most typical excuse in all ecclesiastical criminal prosecutions, according to Helmholz.[58] As neither the accused nor the notary used any phrase explicitly indicating self-defense at Carpentras, comparison poses a significant challenge. Clever defendants at Carpentras construed self-defense broadly. Furthermore, though defendants might be unable to pursue or prove such a claim, they could point to mitigating circumstances of various kinds in a bid for more lenient treatment. At Cerisy, Finch finds that the officiality acknowledged different degrees of culpability in unpremeditated crimes like attacks: fines were reduced if the actions could be justified and the assailant acted under undue provocation.[59] We can speculate that such was true at Carpentras, where a well-constructed tale could mean the difference between open arrest and potentially open-ended incarceration. For about half of those accused of an attack, the notary recorded the defendants' explanation of their actions. Most of the accused who defended their actions claimed that they were provoked or threatened, or denied the court's description of the severity of the attack.[60]

The exculpatory scripts available were limited culturally and legally: the accused parties needed to choose something effective and plausible that would mitigate the severity of their actions. While we have a small set of cases to illustrate the nature of the narratives and the tactics they deploy, these cases are unusually well-detailed for church court records – in part to prepare for appeals – and help us understand what provoked violence. The care taken in constructing and recording the tales leaves us wondering what was considered somehow understandable, if questionable and possibly illegitimate, behavior.

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57 Smail, "Hatred as a Social Institution," 90–126 and, idem, "Telling Tales in Angevin Courts," *French Historical Studies* 2 (1997): 183–215.

58 Helmholz, *The Spirit of Classical Canon Law* (Athens and London: University of Georgia Press, 1996), 387.

59 Finch, "Nature of Violence," 261.

60 While it is possible that some clerics purgated themselves (took an oath aided by oath-helpers), there is no evidence of compurgation in this court, though we may simply lack records of it: McHardy found that this process was conducted outside of daily court proceedings in England, see McHardy, "Criminous Clerks" 173. Still, it would be strange for the notary to fail to record them, even if only in margins, as he did other relevant actions conducted outside daily audiences.

2.5 Immediate Physical Danger and Claims to Self-Defense, Both Dubious and Not

In nine instances, men claimed they were provoked by an immediate threat of physical harm to themselves, or in one case, to a female companion (this includes six claims of physical threat alone and three who claimed they responded to a combined verbal and physical threat). Five presented potentially legitimate self-defense claims: Stephan Corpi claimed he drew his dagger only after his victim unsheathed a sword upon him; Johan de Bonoloco explained that he returned a blow from a demented man; Antonio Montegard stated he only unsheathed his sword after his victim, Peire, had attacked him; Johan Clarenci claimed he protected his companion (and concubine) from a threatening group of men; Bertan Recorderi claimed he engaged in a fight only after his enraged nephew rushed to confront him; Galeas de Bourg unsheathed his sword out of fear of arrest by a sub-inquisitor (and was perhaps galled that his son was aiding the latter).[61] In most instances the court probed whether the defensive reaction was commensurate or measured in one of these cases: for example, after Antonio Montegard explained that his victim Peire – whom the court's proctor claimed had come to make peace – had attacked him first, the judge asked whether Antonio claimed that Peire had carried or used a sword, as Antonio had done.

Most of these types of cases appear to have been spontaneous as far as can be gleaned from the record, but in some, non-violent actions or unusual circumstances (like the presence of a traitorous son) helped spur violence. Take Bertran Recorderi's defense of his attack upon his nephew Johan. He first appeared in court to request the return of his four confiscated cattle and to face an accusation that he wounded one of the bishop's men at a place called la Soqueta.[62] Later that day, both Bertran and his nephew Johan appeared in court. Bertran defended himself against the charges, and we learn that the victim was his nephew Johan, who had been cited with him. One day in the last week of June 1488, Johan was shepherding his flock near his uncle Bertran's field. According to Bertran, Johan slipped, turned his flock astray, and drove it straight through the field and laid waste to the summer crop. Unsurprisingly,

61 See ADV B 3334 fol. 163v, 10 October, 1488 (Fisc c. de Bonoloco); fol. 160v–161r, 10 September 1488 (Fisc c. de Montagard); fol. 114v, 23 December 1487 (Fisc c. Clarenci); 147r, 2 July 1488 (Fisc c. Recorderi); ADV B 3334 fol. 157v, 25 August 1488 (Fisc. c. de Bourg).

62 The package is called an "*assata*," a rare term which appears to mean "roasted meat" according to Du Cange ("roasted meat, deriving from the term ASSATA, *Cherbonee, vel hate*, in Glossar. Lat. Gall, ex Cod. reg. 7692. Vide infra *Assatura*.").

Bertran approached his nephew in response, but he implied that he had not intended violence and was in fact the victim: the "frightened" Bertran merely sought to repel Johan, whom he saw was "madly elevated" in spirit as he approached him. While defending himself, he hit Johan on the legs and upper arms with a package he was carrying. A tight-lipped Johan merely denied the accusations contained in the titles against him. Both were scheduled to return, but the case never recurred.[63] One wonders whether Bertran, after just losing a part of his crop, was such an innocent participant in the fight: it is difficult to reconcile the idea that Johan had accidentally strayed into the field yet was visibly angry and sought to wound Bertran, or to accept as plausible that Bertran, so offended, would merely be defending himself.

2.6 Insults, Threats, Admonishments, and Flexible Interpretations of Dishonor

At the start of this chapter, we met Damian, the baker who attacked a cleric who had accused him of being a thief: Damian had the hallmarks of "the criminal," conforming well to the list of stereotypical characteristics isolated in Claude Gauvard's study of criminal narratives.[64] Even he was able to assert that he had acted in self-defense. But the majority of those accused of assault did not claim self-defense: as was typical in any court, secular or ecclesiastical, the accused lashed out over threats to their reputation, status, or economic resources.

Defendants interpreted (dis)honor broadly, but, as in the baker's case, emphasized an attendant physical danger or threat. Insult was an injury, though no excuse for violence legally, yet it was certainly a socially understandable excuse and may have led the judge's thoughts away from premeditation. Nine men accused of assault claimed to have suffered an insult or injury to their honor, though three of these men stated that a physical threat was the *primary* provocation or trigger. Only six of these nine men asserted that injurious words or humiliation alone provoked them, and typically they depicted their response as immediate and unpremeditated. In two instances, the insult or threat also included a direct challenge to someone's economic resources or welfare – this additional threat was conceived as part of the dishonor.

63 ADV B 3334 fol. 147r, 2 July 1488 (Fisc. c. Recorderi).

64 Gauvard, "Fear of Crime in Late Medieval France," in *Medieval Crime and Social Control*, (eds.) Barbara Hanawalt and David Wallace (Minneapolis, MN: University of Minnesota Press, 1999), 6–9.

Only one other case besides that which opened the chapter involved an accusation of theft (an insult hurled at laymen regularly in the records of Europe's lower courts) and it occurred during an extended and growing quarrel between the Augustinian canons of the church of Saint Mary of Grasse and their superior. By the summer of 1487, it had come to light that the canons were stealing from the cellar kept by their superior, the prior Claude Guiffredi. On the 23 July, one of the servants of the church, Stephan de Meage, denounced one of the canons, Paulo Pichor, whom he caught red-handed snatching grain. According to Stephan, Paulo, upon discovery, lashed out with a threat and a defamatory remark: "go away on your own two feet; you robbed the grain of your master [too] just as you have made to steal his horse."[65] This case is one of five opened against Paulo, so it is difficult to trace his treatment by the court for this offense and it soon was overshadowed by the general rebellion for which all the canons were charged in December. At the heart of their conflict was the contention that their superior dishonored them as a corporation by his failure to provide for them and treat them with fraternal dignity (discussed in the following chapter). A case was opened the next day, but no response was recorded for Paulo. Challenges to one's honor could extend beyond an individual to an entire corporate group, as with the canons, and to one's family and neighbors.

In one instance, the cleric Johan Brunet, felt his own honor – and that of his female kin – was threatened by the closeness of a brothel to his house and the behavior of other women on his street, and that as a Christian it was his duty to "correct" such women. At night, on 12 September 1487, Johan spotted an inhabitant of Carpentras named Maria Silone, followed her to her bed, and beat her many times in the head. Appearing in court, Johan claimed Maria came to a house in which many dishonest women lived. Their habits and household represented a blasphemy in the eyes of the pious, he asserted, and as this house was near his own, he felt their actions expressed contempt for him as well. He took the matter personally, claiming that he did not merely redress this dishonor to himself and his neighborhood, but also engaged in a righteous act of Christian correction, a defense unique to this case. He asked whether, "if it were a brothel [she entered], would it not be right to correct her?" He admitted he followed the so-called common woman to her house and struck her with one blow of his staff, a blow she was not strong enough to endure. Portraying himself as a protective father, he added that his wife and marriageable young daughter were with him. He went on to stress that Maria was conducting her business in the presence of his young daughter whose reputation might be

65 ADV B 3334 fol. 73v, 23 July 1487 (Fisc. c. Pichor). Paul was accused of saying, "*va ba ousi ben podes tu raubar lo blat de ton mestre come tu li as fach raubar son cheval.*"

forever stained by proximity to whores. In his story, his actions were righteous and his family were the victims.[66] And while vigilantism was frowned upon, Johan was not treated as a danger to the community, nor was he incarcerated or required to find someone to act as pledge for his reappearance. The judge scheduled a conclusion to the case and released him on his promise to return, but the record of his case ended there.[67]

Several clerics were attacked in the midst of *legitimate* correction, admonishment, or fulfillment of their secular or ecclesiastical duties. While several of these cases are reserved for the next chapter, the following three demonstrate the potential day-to-day perils for clerics exercising duties, duties which could trigger attacks. While these defendants could not claim self-defense, they could at least depict their attacks as unpremeditated responses to actions which, to them, were deemed as injurious, insulting or threatening in some way. Their actions may also suggest that though we might not always see assailants acting as good members of their flocks, they were concerned about their status as respectable, communicant Christians and often as clerics; to lose such a status could jeopardize their good names, careers, and legal protections.

The first occurred during a time most appropriate for censuring the wayward – Easter. On 16 April 1487, the second day of Easter, Stefan Chantecler allegedly approached and accepted the Body of the Lord, most likely at Carpentras in the Cathedral Church of Saint Siffrein.[68] As it was Easter, he ate the host and drank the wine, as well. Unfortunately for him, Dominus Blaise Amadesi, a curate of Carpentras, spied him doing so, knowing full well that Stefan was in a state of excommunication. Judging that Stefan had "re-aggravated" his excommunication, the curate admonished him, stating that he should meet with a (renewed) sentence of excommunication. Apparently, Stefan was displeased with this act of correction and in no uncertain terms advised him to leave him alone, telling him "[you] rogue, get lost and go home"

66 ADV B 3334 fol. 87v, 15 September 1487 (Fisc. c. Brunet): "*Comparavit ibidem dictus delatus qui euis medio juramento respondit quod in despectu ipsius delati prefata Maria singulis noctibus venit ad quandam domum vicinam domum eiusdem delati ubi . . . sanctos blasfemando plura inhonesta. ac si esset in lupinari non veriter conectere* [sic] *et licet fuerit monita per ipsum delatum ut cessaret in manis viligendo* [sic; *vigilando*] *dei et ipsum delatus sequencus* [sic] *ad dictam domum accessit et viliora concesit. quod non valens tollerare Ipse delatus maxime cum sibi fuit uxor . . . et filia nubilis. Eidem Marie dedit unum ictuus baculi super quibus est contentus stare iure.*"

67 The lack of a recorded follow-up suggests a lack of concern or an easy resolution. Johan could have purgated or a promised to desist from future violence, but it would be unusual to fail to record such an action.

68 ADV B 3334 fol. 39v, 11 May 1487 (Fisc. c. Chantecler).

and other "most hateful things."[69] Stefan confessed this was true, submitted to the judge's judgment and formally promised to reappear in court that evening. No further action was recorded.

One priest explained that he attacked his fellow churchman apparently for implying that he failed in his duties. On 25 September 1487, Dominus Andrieu de Affis had entered the Church of Saint Siffrein of Carpentras, where he was attached as a canon.[70] According to the proctor, who opened the case the same day, Andrieu, without any legitimate reason, and three times in a row, disgracefully injured Johan Nobleti, the archdeacon of the church, by accusing of him of lying. Before the judge, Andrieu admitted he said this, but claimed that Johan had provoked him by falsely imputing that Andrieu was absent from the city for four months that year. This was a serious charge and could have led to disciplinary action, as laypeople and churchmen alike were quite concerned with absenteeism (an issue pursued in the Conclusion).

Occasionally, more creative humiliations and jokes provoked attacks. On the third day of Pentecost in 1487, during the litany, the cathedral Church of Saint Siffrein in Carpentras was packed: "almost all of the populous of Carpentras was commemorating."[71] During services, the cleric Aymo de Fonte rushed at the singer, hitting him with many blows. Hence, the vice proctor stated the Church should be "paid back" for the disturbance to its decorum (and its honor, in a sense) and the harshest canonical penalty should befall Aymo. Aymo was also accused of public fornication. Like most responding defendants, he offered a different context in which to judge his actions and downplayed the violence of the attack. He confessed that he slapped the cantor once, but he claimed he was provoked by many injurious words. Furthermore, the cantor appeared to have played a trick on him or his failure to act made Aymo look foolish. Aymo stated that while the organ played and he was obliged to sing, he sang the *Regina Celi* unaccompanied, in a low bass – the cantor failed to sing and remained mute as the congregation listened, presumably with some mirth.

One of the most detailed cases helps us best understand the entanglement of insult and honor and the competition over very tangible economic resources as well as the role in the court in facilitating claims of provocation. Ultimately, the foundation of the quarrel concerned a small piece of land on the edge of Carpentras that the accused, Bertomieu Pauli, a nobleman residing in Carpentras, claimed his family controlled and which the victim had

69 Ibid. He was accused of saying, "*coquin palhart va ten en ton pays garder la cabies*."

70 ADV B 3334 fol. 89r–v, 25 September 1487 (Fisc. c. de Affis): he was quoted as saying, "*vous mentes per la*."

71 ADV B 3334 fol. 51v–52r, August 1487 (Fisc. c. de Fonte).

recently begun to use. The altercation occurred on 26 January 1487, just off Costelli Street, on the edge of a cultivated area, in front of the house of another nobleman. Bertomieu approached his victim, Aymo, said, "go hang yourself" to him, and beat him with his fist, striking his breast.[72] Bertomieu was summoned and appeared in court that very day. A proctor for the court asked whether he had been urged or provoked (again, reinforcing the impression that the court elicited justifications). The court may have been sympathetic, given his noble status and his connections to the church and its courts (his son, Dominus Johan Pauli, was a canon and rector of the Cathedral Chapter and both had connections to a prominent proctor of the court; his family included prominent civic leaders, as well).[73]

Under oath, Bertomieu immediately agreed that he had been provoked and launched into a story of the dispute. He responded that he had met up with Dominus Peire Cristofori, the aforementioned proctor, who also was a prominent and regular participant of the court. Both men had agreed that he should chat with Aymo in a charitable and amicable way about what Bertomieu deemed a violation of his vineyard, which was on the edge of the territory of Carpentras. Aymo had seized a portion of the path and the corresponding vines in order to transplant some olives and vines there. According to Bertomieu, that side of the path through the vineyard had been held from ancient times by his family and most recently by his sister, the widow of his brother, the noble Antonio Pauli. And public opinion, he claimed, backed up his claim that two vines of theirs were cultivated there in the past. If this was true, he thought, the usage of the land should be renewed.

With Dominus Peire, he went to check out the path, where whom should he meet but Aymo. He claimed to have addressed Aymo in a friendly way with honest words, yet Aymo responded with harsh ones, denying that he had violated his land or crossed into it. Bertomieu objected that these vines of Aymo's were on his side and, thus, Aymo continuously crossed into and violated the land that was under the control of his family since ancient times. Cleverly, Bertomieu was reinforcing his claim over the land via courtroom testimony, stating twice that the land was owned by his family and noting the transgression by Aymo (both by public opinion and with his own eyes). He demanded that Aymo restore this portion of the path to its former state. After

72 ADV B 3334 fol. 12r, 26 January 1487 (Fisc. c. Pauli): "*in Aymonem de Ducibus . . . plura verba iniuriosa protulit dicendo eidem vies gibet et . . . In eundem Aymonem manus iniexit* [sic; *iniecit*] *violentas ipsumque supra pectus aut alios locos sue persone una manu reversa praecussit. In penis iures et canonis Si quis suadente.*"

73 For an instance indicating this relationship, see ADV B 3333, fol. 115r, 16 January 1487.

much talk, things took a turn for the worst: Aymo addressed him as "sir or, better, good woman" to which Bertomieu then responded "go hang yourself." The slight might have been an attack on his sexuality or reinforce that the land was claimed not by Bertomieu but by his female relative. Aymo "led" him to further violence by stating something to the effect of "if you could catch me" and attacking him with his hands. Bertomieu defended himself the entire time until he was struck in such a way that he was swung around and the back of his hand struck Aymo. After this blow, Aymo punched Bertomieu in the breast. At no point does Bertomieu admit to any desire to hurt Aymo or to have acted in anger.[74] A clever and vivid defense, though perhaps, dubious on a practical, physical level. The judge stipulated that Bertomieu be held under arrest, but he was released after he promised to reappear, backed by his oath and his goods, though no guarantor, and no further audience was recorded. This criminal case dropped quickly, due to the compelling testimony, favoritism, or because the crux of the quarrel was soon considered in a civil case involving the property in question.

Bertomieu may have been a virtuoso user of the legal system, but it is difficult to conclude whether the very detailed recording of his defense represented the normal operating procedure or indulgence of a sympathetic court. His legitimizing defense brings together in a coherent whole an ideally well-rounded set of provocations: a threat to his resources, which if left undefended challenged his honor and his clan's claim over the land; a slur to his person; a physical assault responded to in measured self-defense. As such, his defense is like the others, as it attempted to circumvent any accusation of premeditation and to show how an otherwise reasonable person – rather than a reckless criminal – reacted in a well-moderated manner to actions that injured, insulted,

74 ADV B 3334 fol. 12r–v, 26 January 1487 (Fisc. c. Pauli): "*Comparavit Idem nobilis Pauli qui eius medio iuramento imposita sibi pena xxv livres et excommunationis . . . Idem nobilis Pauli et Dominus Cristofori conclussent de aloquendo caritatine et amicabiliter eundem Aymonem de et super quodam violo* [sic] *seu viam vinearum . . .* [Pauli] *confitetur aloquutis* [sic] *fuisse verbis honestis et ipse Aymo eidem verbis asperis respondendo . . . Pauli respondit quod . . . habentes vineas . . . ab antiquisuus temporibus et citra transire consueverant prout viderat ipse Pauli et quod nisi repararet sicut de facto ipse fecerat occupando dictam parvam viniam . . . ad pristinum statum Ad quem et post nonnulla alia verba ipse Aymo respondit in huius modum / Monseigneur val ben madame tunc ipse Pauli respondit eidem vies gibet Dictus vero Aymo duxit respondendo en que vous sias mes supra eundem nobilem Pauli manus imponens violentas ipsum impugendo Et Ipse Pauli se deffendendo* [sic] *sine divertione ad alios actus dum impingeretur brachium elevavit et manu reversa eundem Aymonem percussit ad pectus circa collum Post hoc dictus Aymo eundem nobilem Pauli uno ictu pugni seu manus supra pectus percussit.*"

or shocked him. Most of the cases considered in this section are representative of the typical attack, that is, sudden, unpremeditated, and grounded in anger.

2.7 The Judge Shapes a Narrative: The Reconstruction of the Lifecycle of a Fight

The dispute between Bertomieu and Aymo certainly had the potential to expand, but incidents of protracted disputes and premeditated violence are few in number in these records.[75] Only two of the accused acknowledged that they committed premeditated attacks. In two other instances, assailants pursued targets with whom they clearly had pre-existing quarrels. One of these prolonged quarrels was expanding and escalating into something resembling a feud. While the case and its adjudication includes idiosyncratic elements, it is representative in other ways: its primary participants were clerics, recognizable triggers (insults) helped incite the violence, and the act of violence served a social purpose (to protect one's honor). The assailants' initial failure to redress slurs to his person resulted in pleas from his friends to respond in a dramatic display of vengeance.

Using processual models pioneered by anthropologists, many scholars of crime and feuding insist that fights often escalated through distinct stages, sometimes with time gaps between them: the following case supports this assertion. Each stage of a fight – particularly the initial insults and minor blows – allowed potential intervention and reconciliation. Alternately, though, the situation might be aggravated by friends and family, as explored in the case studies of William Ian Miller.[76] Gauvard suggests that violence was the last phase in a sequence which began with rudeness, then insults, shoving or pushing, and finally the use of weapons and/or bloodshed. Most men progressed through these escalating actions, though some skipped steps.[77] The exchanges

75 This may be typical if we turn to large studies of lower courts over time, despite notorious civic and dynastic feuds. Peter Spierenberg's study of the early modern Netherlands also illustrates that most inter-personal violence was spontaneous, rather than the result of feuds: most homicides in the 17th century were the result of "impulsive violence" towards friends, intimates and strangers (though sudden, anger-induced violence declines in the middle of the 18th century). See Spierenberg, "Faces of Violence, Homicide Trends and Cultural Meanings: Amsterdam, 1431–1816," *Journal of Social History* 27:4 (1994) 711. Compare also to Finch, "The Nature of Violence," 267–68.

76 William Ian Miller, *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland* (Chicago and London: Chicago University Press, 1990), esp. 212–13.

77 Gauvard, *De grace especial*, 707.

of words and wounds over time could lead to increasingly serious violence, especially when the pot is kept boiling by associates who were keen to maintain a friend's honor (and by extension, their group's honor) by goading him to redress wounds to his honor. As Gauvard states, one's honor only existed though the estimation of others and must be demonstrated and routinely re-enacted in public settings. Honor was ever-present in the minds of the supplicants of the courts: they demonstrated it before others in the streets and then in the courtroom.[78] At Carpentras, many attacks illustrate the maintenance of one's reputation and that goal helps shape the way stories are told in court.

One case remains unique in the records, one which involved the attack on an unsavory priest that was briefly described in Chapter One. The description of the events reconstructed by the judge described below relied upon a recognizable, well-worn type of narrative that explained the growth of the feud and the role of the defendant's associates in goading him and planning the attack. The events described in court by the judge and through interrogations created a satisfying story, despite the fact that no formal defense was presented. It may even have been accurate. The story conformed to centuries-old social practice but had the specificity necessary to a legal proceeding. In his study of early 12th-century Touraine, Stephen White noted that people waged feuds in groups, declaring their goal to be one of revenge; in this case, too, revenge was a group project.[79] And, as was typical in the vendettas illustrated by Thomas Kuehn, revenge did "escalate and expand" as allies were collected.[80] In our narrative here, the defendant comes across not as a vicious criminal and reckless deviant, but as a reluctant criminal and as a man driven by circumstances, who behaved like other men did in the course of feuds. The judge's retelling of the story in the courtroom implies that he considered the information that he received as plausible, but ultimately he held the accused man culpable, supporting the precepts of law and the values of Christian moralists. Still, it is intriguing that the judge went to some length to flesh out the story and felt the need to recount it before the court and have it recorded into the *processus*. Was this a result of legal fastidiousness and the need to prepare for a potential appeal, or something more? This is the story told by him in a statement in court and through interrogations.

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78 Ibid., 708.

79 Stephen White, "Feuding and Peace-Making in the Touraine around the Year 1000," *Traditio* 42 (1986): 196–8.

80 Thomas Kuehn, *Law, Family and Women: Toward a Legal Anthropology of Renaissance Italy* (Chicago and London: Chicago University Press, 1991), 150.

On 27 November 1488 at 10 at night, a conflict came to a head in the town of Carpentras, just in front of a monastery where two cloistered women and their abbess resided. Some "iniquitous sons of the city" – who we later find include the cleric Cristofor Daniel, his friend Bertran Albrioni, the nobleman Johan de Saint-Romain (Bertran's lord), and possibly others – brutally beat Astorg de Petra, a neophyte and priest from the town of Vaison. Astorg was lying in his bed at the house of the monastery of two cloistered women. Believing the abbess had called to him, he had risen to speak to her. The attackers, who had situated themselves close by the front of the monastery, attacked the lone and helpless Astorg and inflicted six "deadly wounds" leading to "major blood-loss." The vice proctor fiscal urged the judge to summon Cristofor and his brother Antoni for more information about the affair, and both men presented themselves before the curia. Having prepared in advance, the judge immediately launched into an interrogation about the events of the evening. The blame – and charges – soon fell upon Cristofor alone.[81] Given the "neophyte" label the notary assigned to him and what we know about Cristofor's accomplices, Astorg may have been a converted Jew (rather than a novice). During a time when the court was attempting to reign in the escalating religious hostilities of the diocese, authorities may have been keen to untangle and resolve this issue.

In two statements, the judge reconstructed a narrative before the curia. His story was said to be based upon information received (presumably from civic authorities and one of the accomplices) as well as upon Cristofor's statements, most of which are not preserved here. About three weeks previously, Cristofor was walking through Carpentras with Bertran. Bertran confirmed that Astorg had heaped "great hatred" upon Cristofor and urged that they beat him. He had just the men for the task. They could prepare in advance. Cristofor agreed to the plan. Soon after, the situation was aggravated by Astorg again. One day while Cristofor was entering a religious house of the town of Gigondas to celebrate a holy day, he overheard Astorg warn Cristofor that it would be good that he go home.[82] Bertran, who was returning at the time, witnessed this and again urged the beating according to the agreement reached before. At each stage, Cristofor and Bertran were entangled further together in the plot, strengthening their resolve and bond: they chose to share in his hatred and in the dishonor. As Smail has shown, the "existence of common enmities served, among other things, to refresh and firm up friendships, and the

81 ADV B 3334 fol. 103r–v, 28 November, 1487 (Fisc. c. Daniel).

82 ADV B 3334 fol. 110r, 28 November, 1487 (Fisc. c. Daniel). See Appendix, Text 1b, for a fuller transcription.

friendships themselves complemented and extended kinship groups."[83] Cristofor's motivation was equally straightforward. As Trevor Dean notes also, it was difficult for men to suffer an injury, to forget, to ignore incitements: "Individuals might wish to forget, but society expected them to remember" and if they failed to remember and redress the insult, the story could persist, even over generations.[84]

As a result of this renewal of hostilities, the plan was further elaborated the next day. The assailants quietly collected while the citizens were feasting in honor of Saint Siffrein (the patron saint of Carpentras and its cathedral church) when the city streets were nearly empty and lacked business. Bertran ordered their men to his home by twos and threes and by evening his familiars were assembled. Bertran assured Cristofor that he had foreign men ("*homes estranges*") suitable for the deed.[85] Resolved, Cristofor consented to the attack again and a planning session ensued. After dinner, he would return to Bertran's house. Johan de Sancto Romano was to approach the monastery under the pretext that he had been sought by Astorg, who usually dined there. He would lure Astorg out by calling to him, telling him that the abbess, who lived nearby, was trying to say something to him. If Astorg approached, Bertran would call out to his men and they would all emerge from their hiding place under a nearby roof and capture Astorg in front of the monastery. They would weigh him down and break his arm. Finally, Cristofor and Johan would leave Bertran's men and return to his house.

Upon completing his summary of events, the judge asked Cristofor if the beating occurred in such a way and if Johan knew something about this. Cristofor said no and offered no additional comment. Silence was perhaps his best option. Given how much blame was shared or assigned to others in this story, the judge's narrative may have served him as well as any he could or did give himself; his lack of an appeal, too, may suggest that the story was accurate or unassailable. Note that it is the judge reiterating the claims of enmity, thereby facilitating the narrative strategy so typical of defendants. In the story, Cristofor was provoked by the victim and goaded by friends to preserve his honor. The notary recorded no derogatory comments about Cristofor's character. Nevertheless, the judge did acknowledge Cristofor's intentionality and culpability in making such an agreement.

In the end, Cristofor was able to "quit" himself of the court with a money payment, have the case cancelled, and be done with the matter in less than

83 Smail, "Hatred as a Social Institution," 106.

84 Dean, *Crime in Medieval Europe*, 103.

85 ADV B 3334, 110r–v, 11 December, 1487 (Fisc. c. Daniel).

a month. Still, the court did seem to take the matter seriously. Cristofor spent a few days in jail during the trial, which was more than most, and his sureties were unusually high. On the first occasion it was set at 50 livres, and his father, Michael, acted as a guarantor, and on a later occasion, the surety was set at 100 gold shields, requiring his father and Peire Romey, an apothecary, to aid his oath.[86] Twenty-five livres was the norm in cases in which surety was demanded.[87] At the conclusion, a man named Johan Causender and a supposed accomplice, Bertran, supported Christofor's promise to pay a whopping 25 shields to the court.[88] He paid this final composition, a hefty one if compared to the 1–6 shields paid by others receiving sentences of condemnations (see Chapter Five on punishment). In the end, however, he received no sentence of condemnation, nor defrocking, nor any referral to secular authorities for incarceration.

Astorg's troubles, however, had just begun. Astorg may have been an especially attractive target, a potential convert known for his dubious moral character (he lived in the women's monastery under a license with a fraudulent seal). The venue Cristofor and his cohort chose – a site at which the victim ate with the cloistered women – drew attention to Astorg's behavior, and may have had the effect, intended or not, of prompting the court to initiate a new case against Astorg, who already had been warned about his habits. In the game of honor, Cristofor won a point. Certainly catching Astorg here was a clever course of action in the longer story of their enmity.

While we do not know if their fight continued, in this case and the others, we can see how the courtroom served as a forum for accused parties to present coherent narratives that helped justify their actions and cast doubt upon the victim's status as victim. We see in this case that the judge provided as rich a story as any defendant. The very seeds, or early roots of this quarrel, or any suggestion that Astorg's status as a possibly newly converted Christian played any role in the hostilities, is not clear, but one of the key accomplices, Johan, was connected to a faction involved in various attacks upon Jews in Mazan.

The narrative here reinforces the findings in social history and legal anthropology that assert that public displays of hostility and vengeance were a crucial part of the competitive local politics in the Middle Ages because, among other

86 For the incarceration, see ADV 3334 fol. 106r, 29 November 1487 (Fisc. c. Daniel). For the high surety mentioned above, see ADV 3334 fol. 104r–v, 28 November, 1487 and fol. 106v, 1 December 1487.

87 See Chapter Four, note 43 for a discussion of currency values.

88 ADV B 3334 fol. 108v, 7 December, 1487 (Fisc. c. Daniel).

things, they maintained social networks.[89] We will see more of Johan's violent social network in later chapters. According to the narrative above, Cristofor's group helped ensure that he engaged in such maintenance and competition; in turn, he and the court drew upon that social imperative to build a story of provocation and personal victimhood in an attempt, perhaps, not only to make sense of the his actions, but possibly to mitigate actions which appear to have been both immoderate and premeditated and to allow his re-incorporation into good standing within the community.

2.8 Conclusion

While protracted fights occurred, the typical criminal case in the diocesan court of Carpentras was an unpremeditated attack without major injury committed by a clergyman in minor orders, most often in the streets of the two largest towns of the diocese. Their nature feels familiar to anyone who studies the secular courts of medieval and early modern Europe. The provocations for violence – threats to one's honor, person, and resources – were similar. Like laypeople, clerics retaliated with displays of anger, contempt, and violence to re-affirm their honor. They did so in acts both spontaneous and planned.[90] Cases were initiated most speedily and pursued most doggedly when assailants injured clerics carrying out their duties, when attacks were particularly violent, and when recidivists were involved (just as those involved in sexual misconduct and disobedience, discussed in the next chapter). Clerics, particularly when they acted in pairs and groups, were the court's main targets, and one of its primary goals was to keep an eye on them and their quarrels as part of defending the court's competency over them.

Defendants in these courts, sometimes prompted by the judge, presented stories that justified their public displays of anger by drawing on cultural norms of honor shared with the lay community. This is unsurprising when we note that many assailants, if they were not lay, were drawn from the lower clergy, who lived and worked with, and sometimes married, members of the laity and

89 For a general treatment and references, see: Trevor Dean, *Crime in Medieval Europe* (London: Longman Press, 2001), 22–9; Guy Halsall, "Violence and Society in the Early Medieval West: An Introductory Essay," in *Violence and Society in the Medieval West*, (ed.) Guy Halsall (Rochester, NY: Boydell Press, 1998); Smail, "Hatred as a Social Institution in Late Medieval Society," 92, note 11.

90 Spierenberg also discusses how assailants claimed they were provoked, whether by teasing, insult or a threat to their property ("Faces of Violence," 711).

led lives little different from them. One alleged assailant, Claude Dalphin, had the Latin accusations read aloud to him in the "vulgar tongue," but the court nevertheless protected him from the legal grasp of the town of Carpentras.[91] Because this court protected the privilege of all clergy by principle, as long as their tonsure was intact, the lower clergy reaped the benefits of this (and perhaps appreciated it as a legal dodge or loophole that the court felt compelled to preserve). As responses to slights to one's honor and livelihood, the accused often cast assaults as defensive reactions to provocations. By common sense we can surmise that the legitimizing tactics made cultural sense. Why tell them if they did not?

Their behavior proved to be unruly and impious, perhaps supporting the claims of reformers that there was a "*crise morale du clergé*" afflicting the southern regions of France, as Gazzaniga put it, though the problem was hardly limited to that part of Latin Europe.[92] We began with fights, but in the next chapter will address other misbehavior by the clergy, ranging from insubordination, debauchery, and concubinage to theft and fraud. The criminal and civil cases demonstrate how deeply clergy were embedded in both the local economy and its symbolic economy of honor. Exculpatory defenses, and even the narratives presented by court functionaries, frequently explain actions that function as competitive displays to maintain one's status in the eyes of their peers, both clerical and lay. These displays of anger continued to be a crucial part of competitive local politics in the streets, in church, and even in the cloister. Though occasionally referring to Christian norms, defendants almost always chose to rely upon the norms of an honor culture, which best captured their quarrels, rather than those of Christian moralists. Certainly, these assailants failed to internalize any pious self-restraints and demonstrated no shame or contrition about it.

Court procedure allowed the accused ample opportunity to offer legitimizing narratives to defend those actions. The court was quite willing to hear and record defenses grounded in an honor culture, rather than that of moralists. The judge made no attempt to deny them these courtroom speech acts and sometimes reiterated them himself. He made no explicit comment about any higher standards to which the accused might be expected to conform, something he could have done as he did in cases of sexual misconduct. The court's scrupulous legalism and fastidious record-keeping meant that such defenses were elicited and often preserved. By allowing a defense, the court defended the dignity of the clergy and prepared for a possible appeal, as was the defendants'

91 ADV B 3334 fol. 13r, 30 January 1487 (Fisc. c. Dalphin).

92 Gazzaniga, *L'église du Midi*, 79–80.

right. Its careful procedure also may have safeguarded it against complaints of obvious legal corruption, which were rife across Europe.

Those who provoked others to violence were castigated by the prosecutors of the court, but so, too, were the men who retaliated. We have the recorded actions and statements made in court – themselves only reconstructions of events – and can reconstruct a story of what transpired within court, and to only a limited extent beyond it. But the courtroom itself remains opaque in many ways. We only can conjecture upon the motive, intent, and judgments of the parties involved, including the judge. The judge referred to provocations in his sentencing, yet made few recorded comments on their merit, so we cannot measure how – or if – these tales affected his rulings, an issue explored in Chapter Five. At a minimum, this process was one in which the accused was marked, tracked, and put on record, should he or she transgress again and be considered a more serious nuisance. Cristofor's feud with Astorg suggests that in the end, whatever his sympathies, the judge considered the attacker culpable and accountable for his actions. Whether the assailants' greatest offenses were the assault themselves, the pride or greed that drove them, the poor examples they set, or the breaking of the public peace remains an open question.

CHAPTER 3

Disciplining the Clergy: Personal Sins and Public Challenges

3.1 Introduction

The regulation of moral conduct, particularly that of the clergy, was the quintessential purview of church courts and comprised over one-third of the identifiable cases at Carpentras (see Table 1.). Male clergy, who committed nearly all sexual and spiritual offenses considered by the court, will be the focus of this chapter. The accused clerics engaged in illicit sexual liaisons (though fewer than we might expect), failed to perform their spiritual duties, rebelled against their superiors, and took leading parts in anti-Jewish activities. Unlike those participating in fights, more of these clerics were in major orders and/or were regulars. Their actions took place primarily within the town of Carpentras or its closest neighbors. The settings and publicity of the acts – often coupled with escalating misbehavior – drew both the attention of local authorities and the relative diligence of this court. When the personal became public and the Church's authority was threatened, the court was most likely to pursue a case and the judge to play an activist role in the courtroom. Below, the general nature of the illicit acts will be described, with special attention to those which elicited the judge's keenest attention and his greatest engagement with the accused.

The court responded primarily to problems among the clergy that were difficult to ignore due to their publicity, large numbers of participants, or persistent or aggravated nature. The qualities that drove prosecution at Carpentras were common to church courts elsewhere. As Christelle Walravens notes, the officiality of Troyes was especially interested in intractable recidivists who flouted ecclesiastical authorities.[1] Léon Pommeray concludes similarly that in the archidiaconal court of Paris the principal basis for culpability for a member of the church was scandal.[2] In her discussion of the 15th- and 16th-century southern French diocese of Rodez, Nicole Lemaître, finds that clerical abuses included conspicuous failure to abide by the rule, apathy, and the excessive accumulation of wealth more often than sexual misconduct – all very public

1 Walravens, "*Insultes, blasphemes ou hérésie*," 494, 500.

2 Pommeray, *L'officialité archidiaconale de Paris*, 236–37.

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issues.[3] In Carpentras, the court disciplined its own members, not only to save the erring cleric's soul, but also to register offenders and respond to scandal, perhaps with the larger aim of managing its own corporate reputation.

The way the court's officials handled these misdeeds suggests a subtle, implicit delineation between crime and sin. For the latter, rather than fines, the judge preferred to use abjuration – in which sinners formally vowed to avoid similar illicit acts – as a disciplinary tool, particularly for clergy accused of participating in illicit sexual relationships or disobeying their superiors. This bears resemblance to 16th- and 17th-century Rome, where clergy abjured a variety of sexual misdeeds, as well as immoral and non-orthodox behaviors.[4] If sexual offenders failed to mend their ways after three warnings (much as the Gospel of Matthew suggested), the judge at Carpentras resorted to excommunication and fines, and in just one case, advocated for the imprisonment of the accused. The choice of sanctions may reflect a distinction between "secular" crimes, like assault, and overtly moral and disciplinary delinquency, like sexual misconduct, disobedience, and disorderliness.

When confronting clerics accused of sexual misbehavior or "spiritual rebellion" against church authorities, the judge's reactions were especially robust and well-recorded, and his ministrations exhibited a subtly different, more interventionist character. He was more likely to interrogate the accused directly in court himself: he instructed sinners, probed their intentions, gauged their understanding of their misdeeds, and admonished them. All this fit his dual status as judge and priest. At the conclusion of these cases, the accused, who often admitted their sins early in the process, swore to abjure the sinful behavior in the future. This process may signal a differentiation of *crime* and *sin*, though it is worth remembering that a crime is simply a sin that is actionable, whether it involved failing to love one's neighbor or the violation of explicit ecclesiastical codes and canons. The judge's pursuit of sinners grew more dogged (and his punishments more severe) whenever the accused caused continuing public scandals. The judge's interrogations were a flexible process blending forensic inquiry (typical of any court) and the confessional. At times, the judge simply needed to discover the evidence necessary for conviction. At others, it was clear that he saw an opportunity to instruct sinners, often in cases with the strongest evidence.

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3 Nicole LeMaitre, *La Rouergue flamboyante: clergé et paroisses du diocèse de Rodez, 1417–1563* (Paris: CERF, 1988).

4 Irene Fosi, *Papal Justice: Subjects and Courts in the Papal State, 1500–1750*, trans. Thomas V. Cohen (Washington, D.C.: Catholic University of America Press, 2011), 161–62.

Because the clerical population was so high and prominent, their obedience and proper behavior was essential not only to preserve public order, but to maintain the esteem of the Church and further legitimize its leadership role in the Comtat. Anti-Jewish activities by clerics posed an especially significant public issue here, and brought together the concern for public authority, local peace, and personal dissent. Ecclesiastic and secular authorities may have held the higher clergy, particularly regulars, to higher standards of comportment and were more prone to subject them to the rigors of a judicial inquiry for spiritual offenses. As the French preacher Jean Cleree stated around the turn of the century: "Take one prelate who has charge of one hundred monks, few of whom are good men. This is certainly no honor to him. It is the same in a city under a bishop's jurisdiction. On the contrary, it is said of good princes and prelates that the Holy Spirit is their glory and is shown by the multitude of good people in their care."[5]

The lifestyle and prominence of upper clergy *as clergy* likely meant that they drew more scrutiny than the secular clergy, who led rather secular lives. What was at stake for each group differed. The court primarily cited the lower clergy for fighting in public, and typically for other delicts only when a fight or other public offense brought that misbehavior to its attention. But the judge pursued graver matters with greater diligence – if not with greater penalization – in cases involving priests and regulars: many of the upper clergy facing the court had overtly challenged the authority of the Church's officials, its decisions, and, in one instance, the proper transmission of its faith. Some priests adopted leading roles in attempts to reshape "the Church's" relationship with its local Jewish population. Public disobedience offended the court not only by creating an unsavory image priestly conduct, but by undermining the authority of superiors and ecclesiastical administrators of the Comtat. Rather than articulating a general model of conduct through its pursuit of sinners, the court instead primarily responded to problems which undermined the reputation of church officials and the stability of the Comtat, and quietly dealt with potentially incendiary local matters in its camera. This reinforces the depiction

5 Larissa Taylor, *Soldiers of Christ: Preaching in Late Medieval and Reformation France* (Oxford and New York: Oxford University, 1992), 143. Taylor studies sermons composed by leading preachers in France that were committed to print, speculating that sermons which made it to print were model ones that reflected a certain level of quality and consumer demand. Their primary consumers were scholars and clerics; the collections appear to have been used for sermon preparation by preachers. While her study extends from 1460 to 1560, I have chosen to use examples dating from the late 15th or first years of the 16th century.

of a very circumscribed role for this court as an effectively penitential one; furthermore it suggests that it functioned in part as political convenience to the authorities of the Comtat, as will be explored in the conclusion.

3.2 Sexual Regulation

What is especially noteworthy when looking at the caseload is the court's limited regulation of sexual behavior. Identifiable accusations of sexual offenses were few in number and exceedingly rare for laypeople. While this may be an idiosyncrasy of the period or documentation (as not every case contains any accusation), it reinforces the impression shaped in the first chapter of a court fixated with regulating the crimes and sins involving the clergy; it is worth remembering that the sample is small, merely one hundred and eight-five cases over two years, 31 percent of which lack any statement of the charges against the accused. The findings contrast with most studies of the diocesan and archdiocesan courts of England and northern France, but bear strong resemblance to those of Italy, as well as the lower courts of France and England.[6] The lack of visitations during these years, a process which yielded many of the cases heard in the other dioceses, or a hierarchical division of local disciplinary labor within the diocese, may have limited this regulatory sphere. Alternatively, some laxity towards sexual delicts may have been peculiar to the region over time, as will be explored below. There were a modest number of charges against the clergy, but this may not have been unusual even in neighboring France, for which Jean Delumeau concludes that there was an alarming lack of surveillance by late medieval bishops, illustrating a generally inadequate concern for the spiritual needs of the Christian people.[7] Accusations of sexual misbehavior far less common than assaults and the judge approached and sanctioned them differently.

A church court judge could choose whether to proceed in an expedited manner if the acts were flagrant and notorious. He needed no further evidence

6 Brundage summarizes the European material and details the results for English church courts ("Rules," 32). For a French example, see, Jean-Luc Dufresne, "Les comportements amoreux d'après le registre de l'officialité de Cerisy," *Bulletin philologique et historique (jusqu'à 1610) du Comité des travaux historiques et scientifiques* (1973), 131–56. For Italy, see Brucker, "Ecclesiastical Courts," 243–47. He suggests that lax regulation of the clergy stemmed from a breakdown of a well-established system of supervision and correction, 241.

7 Delumeau, *Christianity*, 157–58. He draws from bishops' registers (primarily its records of visitations) from the 14th through 17th centuries.

to subject the cleric to available spiritual penalties (degradation and the forcible removal of his companion from bed and board). The judge at Carpentras preferred warnings and abjuration before resorting to more serious penalties, the harshest of which was imprisonment. As James A. Brundage notes, however, conviction demanded proof beyond *fama*: judges solved this dilemma in part by interrogation with the goal of confession.[8] Though the judge seemed inclined against convictions in most cases heard by the court, he did embrace interrogation and seek confessions.

The judge's early interaction with sexual sinners is best illustrated through the case of the barber-surgeon, Magister Johan Clarenci. On 24 December 1487, the judge confronted Johan in the courtroom. After a tumult in which Johan purportedly assaulted Magister Andrieu Gruandi, another local notary, questions were raised about his sexual conduct.[9] The judge took a direct, activist, and in the end, very priestly role by abjuring Johan, a procedure reserved for the most part for cases of sexual misconduct and clerical disobedience, and very rarely for assaults: rather than simply hear the defenses' statements, he directly questioned Johan and initiated abjuration in the same audience. The record, too, deviates from his routine narrative summary and records this as an interrogation clearly indicating the questions and answers of the two parties.

Before correcting him, the judge tested Johan's understanding of the rules and his culpability. Under questioning, Johan admitted that for three or four years he lived with and supported a concubine named Margarita de Regio as he would a wife. The judge asked whether Johan had heard the parochial masses in which the curate denounced with the threat of excommunication all concubines, male and female. Johan admitted he had, but continued to live and have sexual intercourse with Margarita and receive the host.

He then extracted details of an altercation between Johan and the local magisters, who had threatened Margarita, a confrontation that brought attention to the sexual relationship and scandal to the community. One Sunday Johan was outside Magister Andrieu's warehouse, where, he claimed, Andrieu and his men were planning to attack Margarita. The judge offered Johan a chance to clarify his intentions, even allowing him a chance to deny that he had intended to fight Andrieu with a weapon and whether he sought to evade the physical confrontation. Johan admitted that he went to the warehouse of the victim,

8 Brundage, "Playing by the Rules: Sexual Behavior and Legal Norms in Medieval Europe," in *Desire and Discipline: Sexuality in the Pre-modern West*, (ed.) Jacqueline Murray and Konrad Eisenbichler (Toronto: University of Toronto Press, 1996), 30.

9 ADV B 3334 fol. 113v–114v, 24 December 1487 (Fisc. c. Clarenci). See transcription in Appendix, Text 5.

Andrieu, where he was unable to avoid the fight, despite holding himself back. Although he did not go to kill him, he had not fought bare-handed or unprotected. He also admitted to swearing in God's name once or twice. He denied that he had beaten on the door of Andrieu's house on another day. The judge accepted his confession and released him from his custody.

Using the process of abjuration, he ended the audience and proceedings, by addressing the offense which led the physical altercation, Johan's sexual relationship with Margarita. In an oath to the holy saints, Johan swore not to take Margarita under his roof nor know her carnally again.[10] He promised to return to resolve the case, but no more was recorded. Abjuration was practiced widely in the 15th century as a response to concubinage, particularly abjuration under pain of marriage (*sub pena nubendi*): couples swore an oath not to have sex and if they did so, and thereby broke their oath, would be subject to penalties for perjury, including fines, unless they immediately exchanged solemn marriage vows. Brundage and Richard Helmholz have illustrated how it was the primary mechanism suggested by canonists for dealing with concubinage and was widely practiced in England.[11]

In the end, it is not clear whether Johan's sexual conduct was of graver concern than the fight, itself potentially a product of the social disruptiveness of his relationship. The judge did not ask whether Andrieu made any verbal or physical overtures to Johan, a question the judge often posed or expected to hear in assault cases. No inquiry was made into Andrieu's behavior, and no witnessing occurred.[12] By goading him into a confrontation, the local notaries publicized Johan's behavior and facilitated his correction by the judge, as may have been the case with the neophyte priest Astorg, the victim of the final conflict discussed in the previous chapter. Andrieu's actions against Johan could have been part of a personal quarrel or a desire to correct a fellow magister in the neighborhood with a humiliating public beating (though, it seems doubtful that the sexual misbehavior of a man in lower orders was surprising, offensive, or even noteworthy). If no public tumult resulted, officials at Carpentras may have been willing to ignore such activities as objectionable but common, despite considerable punditry on the subject.

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10 ADV B 3334 fol. 114r, 24 December 1487 (Fisc. c. Clarenci).

11 Johannes Teutonicus, *Gloss. Ordinaria* to C. 31 q. 1 c. 3 v. *claudatus*. See broader discussions in Brundage, *Sex, Law and Christian Society*, 369–70; Richard Helmholz, "Abjuration *sub pena nubendi* in the Church Courts of Medieval England," *Jurist* 32 (1970): 80–90.

12 One of the judge's questions indicated that he believed that Andrieu and his men intended to attack Margarita. And his inaction could suggest that violence against concubines was not condemned.

Clerics, particularly those in major orders, were continually admonished not to fraternize or live with women and faced legal discipline, but not harsh penalties, for it. Preachers, satirists, and rulers fulminated about the lack of celibacy among priests and advocated reform. While decretists expressed a desire for celibacy, they had trouble asserting that it was demanded by law and keenly recognized the problems of enforcement. Their opinions varied concerning the imposition of penalties but most counseled moderation and mildness in the punishment of simple fornication.[13]

Canonists initially were ambivalent about the legal consequences of concubinage specifically, ill at ease both with deeming it illegal and tolerating it (as did the Old Testament and the civil law). They also recognized the problems associated with differentiating among continuing fornication, concubinage, and clandestine or de facto marriage. As Brundage notes, those who were concerned about concubinage among the clergy also considered it a practice that degraded the dignity of the higher clergy and drained its finances.[14] French preachers like Guillaume Pepin warned that clergymen who maintain concubines have to provide more for them than for legally married wives, because concubines tend to be "greedy, unfaithful, insatiable, and tenacious."[15] In 1435, the Council of Basel forbade concubinage among the clergy, and local synods (one at Avignon) followed suit, but enforcement proved elusive.[16]

Though reformers vilified priests who kept concubines as emblems of moral decay in the church, the practice continued, just as, in some cases, did the quiet toleration of it. Jacques Rossiaud claims that in late medieval Dijon and Lyon laypeople found concubinage by priests to be one of the more upsetting offenses committed by the clergy.[17] The reformer Jean Gerson lamented that inappropriate sexual relationships with women, particularly concubinage, was so common that it was unfeasible to depose them all.[18] Historian Roger Aubenas concludes that concubinage among priests was surprisingly common in the second half of the 15th century, so much so that it did not seem to be particularly scandalous; despite intermittent campaigns against it by zealous preachers and prelates

13 Brundage, *Law, Sex, and Christian Society*, 316–18. Huggucio, for instance, asserted that the Church instituted the practice of celibacy as a disciplinary measure not as a quality inherent to holy orders. Stephen of Tournai asserted that clerics in minor orders could even maintain concubines, though they could not be promoted to higher orders if they did.

14 Brundage, *Law, Sex, and Christian Society*, 297–300.

15 Taylor, *Soldiers of Christ*, 144.

16 Ibid., 537–39.

17 Jacques Rossiaud, *Medieval Prostitution*, trans. Lydia G. Cochrane (Oxford and New York: Basil Blackwell), 41.

18 Delumeau, *Catholicism*, 154.

throughout Europe, there was a "disconcerting" laxity towards it.[19] Pope Innocent VIII even compiled bulls authorizing concubinage. Tacit acceptance can be found in the records for Burgundy and Provence that illustrate that more than half of the bastards born from these unions were granted legitimacy.[20]

Debate about clerical sexuality continued into the 16th century. Protestants found the policy (and its lack of enforcement) ideal for accusing the Roman Catholic Church of hypocrisy. Dissenting from their fellow Catholics, the Christian humanist Erasmus and the theologians of the University of Paris, Martin Le Maistre and John Major, questioned both the practice and theory behind clerical celibacy.[21] Nevertheless, the Church's attachment to clerical celibacy held firm, and after some debate, the Council of Trent re-affirmed it (1563). Did the court's discipline reflect this ambivalence or leniency? Might it have targeted only behavior that was egregious or scandalous in some way? The case against Magister Johan above suggests that the court acted only when public disorder brought attention to the concubinage and without a public response to recognize and/or report upon the transgression we are left to wonder whether and when the wheels of the legal apparatus might have begun to turn.

The court at Carpentras heard relatively few cases concerning clerical celibacy. A small number of cases cited clergy for fornication, frequenting women under suspicious circumstances, keeping concubines, or cohabitating with nuns. Again, when that conduct was particularly egregious, public, or led to fights or quarrels with superiors, the court was informed and began to track and act against offenders with a disciplinary zeal that could increase slowly when the sinners failed to mend their ways.

Some questionable clerical behavior was left untouched by the court. No religious women were charged, though two local nuns were cohabitating with priests, as will be discussed below. As Elizabeth Makowski illustrates, canon lawyers urged that religious women not be charged in the criminal public forum, but in private by their superior, so that their family need not be disgraced. Her evidence and that of Gene A. Brucker illustrate that Tuscan courts followed this approach.[22] The court's proctor and judge also seemed unconcerned that

19 Aubenas, "Le clergé séculier et la vie religieuse populaire," 331–34.

20 Ibid.

21 Merry E. Wiesner-Hanks, *Christianity and Sexuality in the Early Modern World: Regulating Desire, Reforming Practice* (London: Routledge, 2000), 103–104. Brundage, *Law, Sex and Christian Society*, 536–39.

22 Elizabeth Makowski, *Canon Law and Cloistered Women:* Periculoso *and Its Commentators, 1298–1545*," (Washington, D.C.: Catholic University of America, 1997), 71, 86; Brucker, "Ecclesiastical Courts," 239–40. See note 54, also.

clergy visited brothels. In the two fights which occurred in or in front of a brothel, at least one cleric was purportedly using its services, and the judge did not probe into the clerics' sexual conduct. One of the most common critiques of clerks, whether in vernacular literature or in the many cases brought before church courts throughout Europe, was the questionable sexual comportment of clerics; nonetheless, Rossiaud for one is dubious that most laypeople would have been scandalized by priests frequenting brothels, though he does recognize that this activity hurt the perceived dignity of the clergy.[23] One would imagine they would be even less upset by the lower clergy doing so. The lack of any accusations for such activity may reflect a certain tolerance shared by lay and clergy in the Midi as Aubenas has argued, and compares well to the relatively lower rates of such accusations that Andrée Courtemanche and Paul Ourliac have illustrated for the courts of the region.[24] Nothing indicates the populace brought information to the courts on the matter.

At Carpentras, only one other cleric was accused of holding a concubine, though, as will be discussed below, priests did engage in other long-term sexual relationships. The lack of such cases may have been determined not by a weak and neglected reportage process, but rather by a cultural acceptance of the practice regionally. Studies of southern French bishop's registers, visitations, and court records also suggest laxity in this area of sexual regulation. Delumeau notes that only a small percentage of complaints in the bishop's registers and visitations targeted priests holding concubines in late 14th- and early 15th-century France. Only a slightly higher percentage of priests were accused of the practice in the 16th and 17th centuries. He speculates that both parishioners and ecclesiastical authorities accorded local priests some indulgence in this area.[25] In his study of the spiritual and temporal courts of Avignon and the Comtat, Jacques Chiffoleau concludes that such cases were only a tiny fraction of the caseload and found only six cases of concubinage and bigamy combined from 1364–66; three of the concubinage cases involve clerics (one in minor orders, a priest, and a monk).[26] For 14th-century Fréjus, Courtemanche discovered only one condemnation for a notorious concubinage involving a cleric.[27] She notes, too, that there, as at Geneva, Lyons and Laussane, there was

23 Rossiaud, *Medieval Prostitution*, 41.

24 Aubenas, "Le clergé séculier et la vie religieuse populaire," 331–34; Courtemanche, "Morale sexuelle des clercs," *Revue de l'histoire des religions*, 4 (1992): 353–56; M. Paul Ourliac, "Notes sur le mariage à Avignon au XV^{e} siècle," *Recueil de mémoires et travaux publiés par la Société d'histoire du droit et des anciens pays de driot écrit*, 1 (Montpellier, 1948), 55–61.

25 Delumeau, *Catholicism*, 155–56.

26 Chiffoleau, *Justices du pape*, 176.

27 Courtemanche, "Morale sexuelle," 361.

a decided lack of lay complaints about clerics maintaining concubines, and, in general, only relationships causing social disorder posed a concern (such as instances concerning adultery or clerics whose debauched nights led to violence).[28]

Elsewhere, the response was ambivalent and varied, as in the 14th-century parochial courts of England, where, as A. Daniel Frankforter notes, the sympathy of local ecclesiastical authorities for parish priests and lower clergy who kept concubines, though activist bishops castigated their archdeacons for lenience. Attempts to enforce clerical celibacy were among the most difficult and frequently mentioned disciplinary cases: priests clung tenaciously to their concubines and their illegal marriages, leading to fines, imprisonment, and excommunication.[29]

In addition to the two concubinage cases at Carpentras, were several cases in which clerics were accused of continuing and publically-visible sexual misbehavior that indicated long term relationships or a pattern of sexual laxity. One group of canons "frequented" women under suspicious circumstances or in dubious locales. Another pair of priests found the monastery of two cloistered women of Magdalena in Carpentras, presumably a house of rehabilitation for former prostitutes, especially hard to resist.[30]

Astorg de Petra, the neophyte priest whose beating was discussed in Chapter Two, and Dominus Johan Millon, who served as porter to the cathedral chapter of Carpentras, were accused of visiting, eating, and cohabitating with the nuns. Both previously erred, but new events renewed the court's attention on them. Astorg's habits were so notorious that his assailants knew they could find him at the monastery and it is possible that the beating he received at the very door of the monastery drew renewed judicial attention. A few weeks after his assault, he was interrogated by the judge.

In December 1487, the judge addressed Astorg's continuing misbehavior through an inquisition, and as he did in the case of the magister engaged in concubinage at the opening of the chapter, he interrogated Astorg directly. The structure of the interrogation is similar but here, rather than testing Astorg's knowledge of the Church's rules (as in the case of the magister), he reminded him of the judicial sanctions he was under. The judge solicited yes-or-no

28 Ibid., 363–65.

29 Frankforter, "The Reformation and the Register," 213–15.

30 An abbess of a monastery dedicated to Magdalena appears as a plaintiff in the civil records; see ADV B 3333 fol. 87r, 10 October 1486 (Abbess of the Monastery of Magdalena c. Banhi). Mary Magdalene, of course, was often the patron of enclosures for former prostitutes.

answers from Astorg, leaving him little room to shape an argument in his favor. Astorg answered under oath, with a penalty of 25 livres, excommunication, and a year in jail should he fail to tell the truth. The judge asked him when, where, and how many times he had warned him to stop visiting or even entering the monastery, under penalty of excommunication. Astorg stated that he was warned twice in succession, once by the judge in a court audience ("*in studio camera*") and once before the bishop. He also admitted he had entered the monastery.[31] While he had hung about the monastery during the day and into the night and had eaten and drunk with the nuns, he never took his midday meal or supper there, suggesting that he was not living there despite the rumor that he kept a bed in one of the cells, as his purported assailant testified.[32] When asked why he frequented the monastery, he claimed the nuns had asked him to do so.

In a rare moment of forensic inquiry, the judge exploited the chance to use Astorg as a witness to other offenses and possibly a brewing scandal. When asked him if he knew of any others who visited the nuns frequently, Astorg responded that the governor and Dominus Johan Millon did so. He said Johan was there twice in two days, but when pressed, he added that he did not know why. Was he there at night, the judge asked? Astorg had seen Johan exiting at the time of *Ave Marie* (around 6 in the evening) from Thursday through the following Monday. After noting that Astorg was now "thrice instructed," the judge forbade him from frequenting the empty spaces of the monastery (where he was suspected of sleeping) and visiting the nuns. Furthermore, he ordered him not to approach the church of the monastery at all. If he did not follow these commands, he would be considered immediately defamed and face excommunication, a 15 livre fine, and jail time. He demanded he appear before him at 8 the next morning (an unusually specific and early appearance, probably akin to demanding he return first thing in the morning).

Whatever the case, Astorg was back before the court within five days. While Nicolo (an assistant to the court's notary) was showing the abbess what had been said about the matter, including the warning of excommunication, he happened upon the very same Astorg. Astorg admitted he was there talking to the *domina* (the abbess) but claimed the notary had called him over to him. The judge held Astorg in the episcopal residence, where he remained under arrest until the next day, at which point the judge again warned him not to frequent or enter the monastery, day or night, nor even to speak with any of the nuns in the future, lest he face excommunication, a 25 livre

31 ADV B 3334 fol. 111r, 17 December 1487 (Fisc. c. de Petra).

32 ADV B 3334 fol. 103r, 28 November 1487 (Fisc. c. Daniel).

fine, and a one-year jail sentence. Furthermore, anyone who laid with him was to receive the same penalty. Astorg abjured (just like our magister *concubino* above), swearing to desist from his activities and to stand at law for further consideration.[33] About a week later, a complaint was filed against Astorg for returning to his old habits, but the case was soon dropped for a time without a further audience assigned.[34] To acknowledge, register, and maintain surveillance upon Astorg – and have the latter accept the authority of the judge – was enough for the court at this point. He had not yet warranted a prison sentence, unlike his fellow frequenter of the nuns.

The judge showed similar indulgence but growing impatience with Johan Millon, who was also a recidivist. About four and half months previously, in July 1487, the court determined that Johan had been found to be eating, sleeping, and drinking in the monastery.[35] The judge admonished Johan, and even though Johan was unable to find the guarantors that the judge demanded and had refused to make a formal defense, the judge released him on his promise to stand at law. In December, Johan faced the judge again immediately after Astorg (he was recorded as present in court when Astorg was questioned). The vice proctor fiscal urged that a sentence be meted out at this point. Johan requested absolution but was ignored. The judge condemned him though no definitive sentence was yet handed down. Balking at the ruling, Johan requested an appeal, which was apparently ignored as well. Two days later, he appeared, but was released with the threat of a greater fine (50 livres) and was formally warned not to frequent a certain Juanna, nor any of the other nuns, and thereby preserve the honesty of the monastery. Much like Astorg, Johan was forbidden to speak with the nuns, nor in his case, address them except in salutation.[36]

Yet the story continued when both men reappeared in court in March of the following year, 1488. A new case was opened against Johan, presumably on the same matter, though nothing of its substance is recorded: after a few more audiences, the proctor general appeared to state that Johan paid 1 of the 2 shields which the court had condemned him to do, and, by agreement, he was quit of the court (the only instance of a money payment in cases involving sexual offenses). He may have been fined because the court established he had sexual contact, rather than the suspicious living and eating arrangements

33 ADV B 3334 fol. 113r, 22 December 1487 (Fisc. c. de Petra).

34 ADV B 3334 fol. 118r, 3 January 1488 (Fisc. c. de Petra).

35 ADV B 3334 fol. 111v, 17 December 1487 (Fisc. c. Millon).

36 ADV B 3334 fol. 115r, 24 December 1487 and fol. 118v, 14 January 1488 (Fisc. c. Millon).

of Astorg.[37] Astorg's recidivism, on the other hand, provoked the court to change its approach. Commenting that he had been accused, penalized, cited, warned, and excommunicated, the official appeared to wash the court's hands of him. He ordered the notary to send the material to the proctor fiscal, suggesting that a new venue was needed. Then, he terminated the case and turned the matter over Dominus Raimon Brini, vicar of the church of Carpentras, who was commissioned as a judge in the matter (possibly for suspension and incarceration, as had been threatened by the judge earlier).[38] Johan never reappears in these records. Perhaps, again, registering and tracking the behavior, as well as the example provided by Astorg's punishment, sufficed.

In the end, the Astorg finally may have faced the court's most extreme sanction, prison, and there are suggestions that his lifestyle had become notorious (mention was made of the attack upon him). But the judge moved only slowly beyond the normal habit of registration, admonishment, and threat. The judge and official may have been confident that given the warnings to the abbess, who used the services of the court's civil forum, they would be able to track any future visits by the priests. Certainly, they must have recognized the well-known dangers and scandal posed by sexual relationships between nuns and male clerics.

Though the Roman Catholic Church attempted to pre-empt sexual relationships with nuns by reaffirming strict claustration, the problem remained perennial. Peter Linehan illustrates how an intensive set of affective relationships among the nuns of Zamora and their mendicant advisors helped fuel a rebellion of the nuns, made worse by their relative freedom from the bishop's discipline.[39] Linehan suggests that this event may have influenced Boniface VIII to issue *Periculuso* (1285) which mandated the stricter enclosure of nuns and was rationalized, in part, by the alleged licentiousness of female monastics.[40] Though, as Katherine Gill emphasizes, these rules may have responded to the uncomfortable politico-economic power and autonomy

37 ADV B 3334 fol. 129r, 10 March 1488 (Fisc. c. Millon).

38 ADV B 3334 fol. 129v, 14 March 1488 (Fisc. c. de Petra). No further actions or audiences were recorded in this court.

39 Peter Linehan, *The Ladies of Zamora* (University Park, PA: Pennsylvania State University Press, 1996).

40 Makowski also argues that the decretral meant to save women (who were sinful by nature) from themselves by removing worldly temptations from women and, over time, enclosure became an end in itself (idem, *Canon Law and Cloistered Women*, 70). Note that the focus of *Periculoso* was on the sinful nature of women themselves; the judge chose to focus on the males' behavior, which was both immoral and illegal.

exercised by female religious.[41] Desires for stricter claustration culminated in the Council of Trent's decision to re-emphasize Boniface VIII's standard of strict enclosure, which if violated resulted in excommunication and/or secular punishment.[42] The Council commanded that bishops – on pain of divine justice and damnation – ensure the enclosure of female religious houses, coerce the disobedient through ecclesiastical censures, and when necessary, call upon the aid of secular authorities.[43] But even after the Tridentine re-affirmation of strict enclosure, problems continued, particularly involving nuns and the male clergy who had better access to them. Through a study of early modern Venetian courts, Mary Laven illustrates how nuns and male clergy developed strong affective relationships modeled on heterosocial ones involving secular rituals of courtship and marriage.[44] Nuns offered priests an alternative to concubines and allowed both parties a controlled degree of erotic fulfillment and depositions from court cases suggest that sexual intercourse was rare.[45] To return to Carpentras, it appears that one of the cited priests, Johan, was smitten with a specific nun and possibly established a long-term relationship. Indeed, references to the errant priests eating and sleeping at the monastery may suggest that the nuns provided the comforts of a spouse. The records are silent on this: priests may have avoided permanent liasons or simply quietly practiced them and were quietly ignored if they did not disturb local society or pre-existing marital relations.

The court charged only one other priest of a serious sexual breach, Siffrein Combe, who was accused openly maintaining a concubine ("*concubinam manifestam*"). Drawing on a well-worn form of legal defense in such situations,

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41 Katherine Gill, "*Scandala*: Controversies Concerning Clausura and Women's Religious Communities in Later Medieval Italy," in *Christendom and its Discontents: Exclusion, Persecution and Rebellion, 1000–1500*, (ed.) Scott L. Waugh and Peter D. Diehl (Cambridge and New York: Cambridge University Press, 1996) 183–84.

42 Wiesner-Hanks, *Christianity and Sexuality*, 104.

43 Makowski, *Cloistered Women*, 128.

44 Mary Laven, "Sex and Celibacy in Early Modern Venice," *The Historical Journal* 44: 4 (2001): 865, 875, 883–84. Like Makowski, she asserts that claustration became the prime goal – rather than the regulation of sex – in the early modern period. Both nuns and priest were to be punished for transgressions by ecclesiastical and secular authorities (idem, 868).

45 Ibid., 876, 883 and 887. She also asserts that enclosure created constraints in their relationships, promoting a unique celibate desire and heterosocial, rather than heterosexual, interaction in which bodily intimacy was less important (versus emotional intimacy and mutual aid). These relationships provided women a way to influence the outside world through their charity to priests who used the money to fulfill familial duties like contributions to the dowries of family members (idem, 882).

Siffrein denied the accusation and insisted that Margarita, the wife of Peire Gondoloni, was, and was recognized to have been, his servant. The judge simply threatened him with the standard 25 livres for non-appearance and the case was left without a further day assigned.[46] One might suspect that the issue here was less about the concubinage itself, but rather the fact that it compromised the marriage. As in the case of the nuns and priests, the court may have acted only when affairs were notorious, socially disruptive, or jeopardized legitimate unions, much as Courtemanche concluded for Frejus.

The final sexual delict considered here leads us into even murkier waters and clearly interrupted a properly constituted marriage. On 22 March 1487, the judge ordered the jailing of the priest Dominus Johan Amaureri for harassing and sexually assaulting Catherine, the wife of Ponce Scoferi.[47] For many years, according to the accusations, he had propositioned and visited her while she was alone to hold "dishonest conversations" with her in order to cajole her to have sex with him. To that end, he offered many goods, small rings, and other such things while drunk, and often threatened to kill himself if she did not vow to have sex with him. When she was alone, he had scaled Ponce's walls, come into her apartment, and withdrawn with her to someplace private. He finally forced himself upon Catherine, who was unable to repel him.[48] While we do not know how or why this came to the court's attention, whether through Catherine, her confessor, husband, or neighbors, the narrative sounds like Catherine may have told the story. After he provided bail with a guarantor and appeared twice more, the notary recorded nothing further.[49] Again, the records prove frustratingly mute. The court never pursued a case against Catherine. It is possible the judge may have found her testimony compelling and let her confessor handle

46 ADV B 3334 fol. 154r, 12 August 1488 and fol. 159r, 5 September (Fisc. c. Combe).

47 ADV B 3334 fol. 25r, 22 March 1487 (Fisc. c. Amaureri).

48 ADV B 3334 fol. 26r–v, 23 March 1487 (Fisc. c. Amaureri): *"Comparavit Rostagni qui . . . imposuit eidem quod apluribus annis . . . dominus Johannes pluries et diversis vicibus frequentavit Catherinam uxorem Ponceti Scoferi cum qua plura coloquia inhonesta habuit easque saepissime requisivit ut ab eodem domino Johanne se pateretur carnaliter cognosci eidem plura bona offerendo poto anullos* [sic; *anulos*] *et cetera huiusmodo que applicatoribus policeri sunt consueta addens sepivisse colloquiis praedictis. Se ipsum dominum Johannem esse morti exponere si votum ab ea non consequatur sperare Et quod penis est auditis per ispum dominum Johannem tam . . . repulsis per ipsam Catharinam sibi factis pluries conatus est eam solam in locis remotis et suspectis compararet ascendendo etiam pluries et scalando* [sic] *pariente de retro domus dicti Ponceti ut ipsam Catherinam vi non obstari contradictionibus per eam fiendis sibi posset carnaliter copulare."*

49 ADV B 3334 fol. 27v, 30 March 1487; fol. 31r, 24 April 1487; fol. 35v, 2 May 1487 (Fisc. c. Amaureri).

the matter, thereby protecting her honor and domestic peace. Even if the judge believed she encouraged such a relationship, he may have been disinclined to act against her. As Leah Otis-Cour shows for the Toulousain, marital reconciliation, rather than punishment, was increasingly preferred by the 15th century.[50]

By canon law, she certainly could have been cited. The decretists of the high Middle Ages considered degrees of force and coercion, including non-physical ones. But a prior relationship was also a factor and their earlier moments alone incriminated Catherine.[51] While the Eve-as-temptress was a common trope, late medieval preachers also held fellow clergymen, too, responsible for initiating affairs with women.[52] By the 15th century, Brundage adds, laywomen who had consensual sex with clerics apparently were no longer punished in ecclesiastical courts (though women were subject to server corporal punishments in Italian legal codes by this period).[53] While Brundage stresses male accountability, Nicole Gonthier illustrates that the narratives presented in the officialities of Lyon conformed to literary tropes about women both as seductresses and as victims (of laypeople and clerics); in their treatment of women, the courts presumed neither responsibility nor lack thereof.[54] According to Gonthier, secular and ecclesiastical authorities in Lyons and Dijon conducted serious inquiries, demanded numerous proofs, and punished infractions severely especially if the victim was a child or virgin, in rape cases.[55] There, the good reputation of married women demanded proof, though no such proof was requested or offered in the case at Carpentras, but just as in Lyons and Dijon, the account is detailed and includes concern over her physical resistance.[56]

The boundaries separating fornication and adultery from rape were ill-defined semantically and legally.[57] Historians have noted the association of

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50 Leah Otis-Cour, "*De jure novo*: Dealing with Adultery in the Fifteenth-Century Toulousaine." Speculum 84 (2009): 366–80.

51 The victim's family could also demand compensation or, failing that, they could seize his person: the Scoferi did not seek such remedies. See Brundage, *Law, Sex, and Marriage*, 311–12.

52 Taylor, *Soldiers of Christ* 171.

53 Brundage, *Law, Sex, and Marriage*, 539. Trevor Dean, *Crime and Justice in Late Medieval Italy* (Cambridge: Cambridge University Press, 2007), 138.

54 Gonthier, *Délinquance, Justice et Société*, 118–120.

55 Nicole Gonthier, *"Les victims de viol devant les tribunaux à la fin du Moyen Âge d'après les sources Dijonnaises et Lyonnaises," Criminologie*, 27: 2 (1994): 9–32.

56 Ibid., 19–21.

57 This was true in spiritual and temporal courts. See Lansing, "Gender and Civic Authority," 45–46; Trevor Dean, *Crime and Justice in Late Medieval Italy*, 139. When evaluating the violent element of the crime, it is also worth noting that feminists like Kathryn Gravdal assert

rape and abduction cases (often accompanied by promises of marriage) with illicit or aborted marriage formation, and with attempts to subvert property laws.[58] In this case, Catherine did not abandon her husband as far as we know. But, as in most church courts, this one was interesting in threats to marital norms of propriety, especially when it involved the scandalous actions of a priest.[59]

Only three cases (a sliver of the one hundred eighty-five cases heard from 1487 to 1488) addressing sexual infractions by the laity were identified, which may suggest a non-activist disciplinary approach to sex in the diocese. In June, 1487, Ludovic German, a laborer of Carpentras, was accused of holding two wives simultaneously.[60] In July of the same year, the court also accused a couple of forming a clandestine marriage: Piere Laudon (initially labeled a "*poterius*," though this had shifted to "magister" at the conclusion of the case) and Bitrona (whose surname shifts from Laudon, to that of her father, the

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that the sometimes hazy lines between fornication (or adultery) and abduction/rape was reinforced by a legitimization of the use of male force in normative sexual relations between men and women. See *Ravishing Maidens: Writing Rape in Medieval Literature and Law* (Philadelphia: University of Pennsylvania, 1991), 9. One might conclude the cleric's use of force was offensive to the court (and before the law) primarily because his target was a married woman. Caroline Dunn's work on rape and abduction illustrates the complexity of the laws and language concerning such offenses; though her study focused almost entirely on secular courts, she includes significant references to Church doctrine and legal practice [see: *Stolen Women in Medieval England: Rape Abduction, and Adultery, 1100–1500* (Cambridge: Cambridge University Press, 2013)].

58 See the historiography on marriage cases in the Introduction. This was true outside ecclesiastical courts and extended beyond the medieval period. See, for instance, James Farr, *Authority and Sexuality in Early Modern Burgundy, 1550–1730* (New York and Oxford: Oxford University Press, 1995), 98–110. Regional works on sexual violence place their findings within a "culture of the Rhone" in which young males engaged in rituals of aggression (often in gangs) that functioned as part of a lifecycle event (bonding males with one another and conditioning their development into adulthood) and as a form of social disciplining of women. Chiffoleau finds that violence against women was relatively frequent and simply cites the aforementioned model developed by Jacques Rossiaud.

59 Courtemanche, "Morale sexuelle," 361. For England, see, for example the general conclusions of Poos who concludes that cases involving illicit liaisons and violence that came to church courts were ones which were open, persistent or offensive enough to provoke the response of ecclesiastical authorities. See "The Heavy-Handed Marriage Counselor: Regulating Marriage in Some Later-Medieval English Local Ecclesiastical-Court Jurisdictions" *American Journal of Legal History* 39 (1995): 307–8.

60 ADV B 3334 fol. 51v, 8 June 1487 (Fisc. c. German). He appeared once, promised not to leave the city under penalty of 40 livres, and though he was ordered to reappear the following day, no other mention of his case appears.

notary Magister Girard Ricard).[61] The cases against each were unusually protracted, and while they were assigned separate audiences, they were sentenced together.[62] We can only conjecture where they cohabitated and how this came to the attention of the court. The court sent summons to – and failed to capture them at – the lodgings of the woman's father, but his residence was not recorded. During sentencing, the notary recorded that the judge stated that money was owed to the proctors and lords serving the bishop in Avignon.[63] Despite several failed pre-sentencing appeals on unspecified technical grounds, the two were condemned jointly to pay a high fee of 30 gold shields. The cost probably was inflated due to the fact that both owed court fees to legal functionaries (the judges, proctors, and notaries) in both the towns involved. Peire promised to pay and made a "composition" for the total amount immediately upon sentencing.

As noted above, the findings in this area of regulation may be sparse due to the lack of visitations or they may reflect a regional trend, but it is important to note that as early as the 13th century secular courts made many areas of lay sexuality their concern. As noted before, northern French officialities continued their exceptionally zealous regulation of lay sexuality, and as Sara McDougall compellingly illustrates, the bishop of Troyes meted out unusually harsh sentences in the frequent cases of "bigamy" (a second marriage while the original spouse lived) addressed in the 15th century.[64] Regional variation was notable, however. In England, civil, rather than criminal, litigation addressed marital formation, yet as Charles Donahue noted, there were, in general, fewer marital cases in France than in England, and they were more typically heard as criminal matters.[65] Secular courts were assuming greater control over lay

61 ADV B 3334 fol. 66v, 12 June 1487 (Fisc. c. Laudon) and ibid., (Fisc. c. Laudon/Ricard). More often than not, Bitrona and Piere were cited separately, though they appear on the same days, share the same proctor and pursue the same procedures in all the audiences. It may not be significant that they shared the same proctor (Balthesare Achard), because he was the one most commonly used by defendants.

62 Contumacy, delays and considerations of appeals on technical grounds helped extend its length. While the bulk of the audiences occur within a month-and-a-half period, the cases against each were finally resolved over eight months later.

63 It is possible that someone there informed the court and the two accused lived there. ADV B 3334 fol. 131v, 4 April 1488 (Fisc. c. Laudon and Laudon/Ricard).

64 McDougall, *Bigamy and Christian Identity*.

65 Debates over regional differences in marriage and the church's regulation of it is rife and gains considerable momentum in the following articles: Andrew Finch, "Parental Authority and Clandestine Marriage," *Law and History Review* 8 (1990): 189–205; in response, Charles Donahue Jr. "'Clandestine' Marriage in the Later Middle Ages, A Reply,"

adultery and fornication – a process beginning at least in the later 13th century in Italian cities and in the mid-14th century in the realm of France – and there are reasons to wonder whether this region was unique in its approach to regulating lay sexuality.[66] Jean-Marie Carbasse and Otis-Court demonstrate both the involvement of secular courts in this sphere from the mid-13th through 15th centuries, and the growing laxity towards offenses like adultery (which increasingly resulted in fines rather than the more draconian punishments available), particularly in their areas of close study, southern France.[67]

The findings at Carpentras are unsurprising when compared to the spiritual and temporal courts of 14th-century Avignon, where sexual offenses often were a small or modest part of the total (2 to 3 percent).[68] Almost all those fined for sexual offenses were laypeople accused of adultery and only a few people were charged each year. About 25 percent of the fines for the officiality, specifically, fell upon sexual offenders. It targeted bigamy and concubinage, but above all adultery (secular courts addressed various forms of debauchery, fornication, and infidelity). Bigamy and concubinage cases were few in number in both systems. From 1364–66, there were only six cases over these offenses in Avignon's Temporal Court and in the officiality, where a cleric, a priest and a monk faced the latter accusation. Chiffoleau argues that justice sought to preserve the institution of marriage and judges were more concerned with proper conjugal affairs than regulating loose sexuality. In her study of Fréjus in southeastern France, Courtemanche finds that lay courts, too, typically only

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Law and History 10 (1992): 315–22. Donahue then published *Law, Marriage, and Society in the Later Middle Ages, Arguments about Marriage in Five Courts* (Cambridge University Press, 2007), arguing that while courts applied the medieval law of marriage in ways true to the canon law, there were significant differences in the types of cases and their resolutions. In England, partners exercised more control over their marriages (particularly their formation), whereas in northern France and the southern Low Countries, families and social superiors had greater control. In the past, he has suggested that this might be truer of the south, where fewer marital cases can be found in the church court records. At the annual conference of the American Society of Legal History (Ottawa, November 2007), however, he questioned his thesis that part of the reason England exhibited unique marital patterns involves a sense of English individualism in marital choices.

66 See general discussion in Carol Lansing, "Gender and Civic Authority: Sexual Control in a Medieval Italian Town," *Journal of Social History* 31:1 (1997): 45–46.

67 Jean-Marie Carbasse, "'*Currant nudi*': la répression de l'adultère dans le Midi médiéval (XII^{e}–XV^{e} siècles)," in *Droit, histoire et sexualité*, (eds.) Jacques Poumarède and Jean-Pierre Royer (Toulouse: Publications de l'Espace Juridique, 1987): 83–102; Otis-Cour, "Dealing with Adultery in the Fifteenth-Century Toulousaine," 347–55 and 380–92.

68 Chiffoleau, *Justices du pape*, 175–82.

acted when a threat was posed to established marriages (by adultery), to the social order necessary to ideal marriage formation (by attacks on virgins), or to public peace (sexual acts coupled with violence).[69] Her findings, too, fit comfortably with those for Carpentras, as well.

3.3 Personal Salvation and Sacerdotal Duties

Cases over the failure to perform one's personal salvational or devotional duties are varied but few, perhaps because parish priests and archdeacons resolved the problem as they did elsewhere and again a visitation might have increased their numbers.[70] At the Fourth Lateran Council, the Church mandated that all Christians, lay or clergy, receive the host and confess their sins to their own priest annually at Easter, a basic stipulation that was expected in the later Middle Ages: failure to do so was at issue in most cases concerning personal devotional requirements.[71] As only two accusations were made for such offenses, soon after Easter, it seems unlikely that there was any general call to report of offenders or local reckoning. Nine individuals, only two of whom were (lower) clergy, purportedly failed to fulfill their duties of confession and communication. A few received the Eucharist while excommunicate. Two laymen were accused of defying the prohibition of labor on major feast days: as in other areas, surveillance in this area may have been weak or even accidental.[72] Defendants claimed a technical difficulty or local quarrel led to their inability to perform properly their duty to confess and receive the host.

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69 Courtemanche, "Morale sexuelle," 375.

70 The numbers were so small, that most studies ignore them. For medieval London, see Wunderli, *London Church Courts*, 122–23. The caseload continued to be small in England despite Mary's injunctions: see Houlbrooke, *Church Courts and the People*, 232.

71 See ADV B 3334 fol. 120v, 23 January 1488 (Fisc. c. Ybri) and fol. 39v, 11 May 1487 (Fisc. c. Vines) for the re-affirmation of the rule in statements by proctors serving the court.

72 For example, see ADV B 3334 fol. 167r, 4 November 1487 (Fisc. c. Grimaud). While he was marching in the general procession on All Saints' Day, Dominus Guilhem Vernarelli (*locumtenens*) apparently noticed Bartholomieu Grimaud had sold and put things out for sale on the street. Bartholomieu weighed and sold two or three pounds of fish according to his father, a cleric named Johan Grimaud, who confessed to the offense in his son's name. The day the case was set to renew, all cases in court were delayed until evening, but this case apparently was not heard. The other accused party, Jacomo Regis of Villis, a cloth-merchant, ordered two of his servants to work on the feast of Saint Marc the evangelist; see ADV B 3334 fol. 33r, 27 April 1487 (Fisc. c. Regis). After three failures to appear, nothing more on the case was recorded.

In these cases, proctors made quite an effort to secure documentation and witnesses, versus the cases over sin, and this could prolong cases for months. Those accused of sexual misbehavior more often confessed to clear-cut offenses, while the cases over one's communicate status involved debates and some confusion about whether and when the person cited had last taken the host or had been excommunicated by a parish priest. The remarkable availability of documentable proof facilitated or encouraged the careful approach to proof here. Court agents scrutinized books of excommunication to verify or refute the stories of the accused, and settled potential confusions over ex/communicate status. Presumably, too, this diligence reflected a continuing habit of surveillance created in the 14th century according to Chiffoleau, in which courts and churchmen acted as archival agents. Here, the court's actions ensured the maintenance of precise recordkeeping and oversight (in the officiality and the localities in question).

The court placed clerics under greater scrutiny. Johan Motagardi, a married cleric from Mazan, who was summoned on the 20 May 1487 and finally appeared on 9 September, admitted that he had not confessed since the previous year.[73] He claimed that he neither communicated nor confessed in his home church of Mazan due to pending litigation with the community there. In order to avoid them, but also due to an unspecified "infirmity," the prior of the rural church of Sancti Donati administered it to him. A skeptical proctor of the court continued to pursue the case. Promising to return, Johan was released on his oath. After two more delays (and four charges of contumacy, one of which resulted in excommunication) the case never recurred. Also failing to communicate was an unmarried cleric named Peire Ybri, who first appeared in June after authorities in Mazan referred warnings about his offenses.[74] He stated that he thought the court's regulation of these matters did not extend to foreigners or resident aliens, which he claimed to be. Three witnesses were called to prove his assertions about his residency.[75]

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73 ADV B 3334 fol. 139r, 20 May 1488; fol. 140v, 28 May 1488; fol. 150r, 30 July 1488; fol. 153v, 8 July 1488; fol. 155r, 22 August 1488; fol. 159v–160r, 9 September 1488; 155r, 22 August 1488; fol. 159r, 5 September 1488 (Fisc. c. Motagardi). Possibly his priest, or the disgruntled community of Mazan, informed a functionary of the court as part of their conflict with Johan. Given that so much reportage occurred incidentally, the courts may have heard about this in relation to the other dispute to which Motagardi alluded.

74 ADV B 3334 fol. 67r, 22 June 1487 (Fisc. c. Ybri).

75 ADV B 3334 fol. 120v, 23 January 1488 (Fisc. Ybri). Witnesses are listed on fol. 101v, 21 November 1488 (Fisc. c. Ybri).

A case against a layman who received the host while excommunicate illustrates the potential complexities of proof for infractions occurring outside Carpentras as well as for the legalism of the court. On 11 May 1487, Raimon Vines of Murs was accused of disdaining to communicate during the two days of Easter. The court was aware that Raimon had been excommunicated. On the 18th, Raimon claimed that he had been released from excommunication and received the host six times since then. After continuances and delays, on 20 August, Raimon's proctor requested that the judge simply absolve Raimon and cancel any ecclesiastical excommunication performed in his hometown of Murs.[76] On the 31st, the court summoned the curate of Murs along with other witnesses. In late September, Raimon's proctor brought into evidence the book of excommunications for Murs, which purportedly recorded the excommunication and absolution. The proctor requested the re-absolution of Raimon.[77] Ever sensitive to the possibilities of fraud, the judge scheduled a viewing of the manual by the court's notary to confirm that the book was authentic. A month later, the notary informed the court that he personally had examined the said book, which was again at Murs. Furthermore, the vice curate of Murs, Dominus Guilhem de Fabrica, verified the book's authenticity in a public oath. A few days later, the judge considered both the book and Guilhem himself and a conclusion was scheduled.[78]

The proctor fiscal accused only one cleric for failure to perform his sacerdotal duties for the community, a deep concern for parishioners across Europe. Perhaps such problems were not rampant or were ill-policed by immediate superiors and not perceived as a disciplinary matter significant enough for this court. In the case, one priest denounced a fellow priest, Dominus Johan Fachaud, who he claimed had worn irregular attire while celebrating mass: a worn two-year old robe which had been shortened at the base up to the knees and trimmed of its fur (which he was accused of selling). When confronted in the church, Johan flew into a fit, committing injuries in the church and uttering "impious words."[79] What this case did share with others targeting the religious, moral, and sexual misdeeds of the clergy was the tumult it raised.

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76 ADV B 3334 fol. 80r, 20 August 1487 (Fisc. c. Vines).

77 ADV B 3334 fol. 89v, 25 September 1487 (Fisc. c. Vines).

78 ADV B 3334. fol. 94v, 22 October 1487 and fol. 95v, 26 October 1487 (Fisc. c. Vines).

79 ADV B 3334 fol. 10r, 19 January 1487 (Fisc. c. Fachaud); he was accused of speaking, "*nephandis verbis.*" The case was quite protracted and continued into August, during which Johan was imprisoned (with a penalty of 100 livres for any escape) for a day and witnesses were called. A new case was opened against him that month, but by October the cases were put

In the 15th century such blasphemy and swearing received increased attention. In later 15th- and early 16th-century France, there was a drive against blasphemy (as speech acts involving negative references to God, Mary, and the saints) specifically.[80] At Avignon, in response to the fierce diatribes by reformers clamoring for harsher sanctions, the courts adopted higher monetary fines.[81] Studies of French courts suggest that these types of speech acts tended to occur in public venues and provoked scandal.[82]

But only a small group of cases at Carpentras confronted speech-acts that compromised the soul, and most of the accused simply swore in the heat of a conflict, though two accusations suggest that a pair of clerics promoted a false belief, possibly as part of some chicanery or fraud, as will be discussed later in the chapter. The court cited four clerics for the impious, blasphemous use of their tongues. Two included cursing, spontaneous illicit speech-acts made in the midst of an argument, and thus resemble the blasphemy cases Gonthier found at Lyon.[83] One example catches the flavor of these accusations. On 10 March 1487, the married cleric, Johan Guilhard, offended the vice porter of a church by swearing to God that he would not return.[84] Guilhard promised to return to court, but no more was heard on the matter. And, in sum, these cases feel cursory: they lack much detail or follow-up by this court and fail to suggest public threat and gravity vested in the attacks on superiors, local policies, or orthodox doctrine considered below.

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aside without the assignation of a future audience: ADV B 3334 fol. 95v, 26 October 1487 (Fisc. c. Fachaud).

80 See Gonthier, 315.

81 Chiffoleau, *Justices du pape*, 266–67.

82 This was often true whether we look at blasphemy or heresy: see Walravens, "Insultes, Blasphèmes ou Hérésie," 500. Gonthier and Walravens both illustrate the strong connection between these acts and the public order and the authority of the local bishop.

83 Gonthier, 315–16. One was a regular and the rest were secular. There were no instances suggesting heresy, despite the inception of a 1487 crusade against the Waldensians in the Dauphiné; in any event, heretics were subject to special inquests. Two of acts of impious speech occurred during a heated confrontation. The cleric Johan Clarence confessed swearing once or twice "*de deo*"; see ADV B 3334 fol. 114r, 24 December 1487 (Fisc. c. Clarence). The priest Johan Fachaud uttered unspecified impious words in the Church of Caromb during the Mass when someone noticed his improper clothing; see fol. 95v, 26 October 1487 (Fisc. c. Fachaud).

84 ADV B 3334 fol. 128v, 10 March 1488 (Fisc. c. Guilhard): "*Le sanc dieu je nen feray reri.*" He confessed, submitted himself to the ministration of the judge and promised to return for his sentence, but nothing further was recorded.

3.4 Rebellious Regulars: Food, Lax Habits and Spiritual Rebellion

If we consider the numbers accused and the relative tenacity of the court's pursuit of them, of far greater concern to the court than the misdeeds above was the disobedience, ill-discipline, and "rebellion" of clerics. A good number of them stemmed from a deteriorating situation involving the Augustinian canons of St. Mary of Grasse. Several of these acts occurred in public venues, including one during a processional. Ultimately, the canons' superior lost all ability to rule them, and for reasons never specified in the records, ended up beleaguered by separate legal proceedings against him. Against each of the canons, the court pursued lengthy cases and its attention to the matter was unsurprising given that conflicts between superiors and regulars threatened to worsen and expand.

Rebellion by unruly regulars may have been a growing problem of the 15th century. For Lyon, Gonthier found that cases addressing this problem tripled from about 5 percent (1344) to 16 percent (1405).[85] According to research on northern France, secular authorities intruded upon these quarrels in the medieval and early modern periods, thereby promoting the escalation and expansion of the conflict. Though the Church had for centuries asserted the privilege to police its own members, beleaguered superiors petitioned secular authorities for aid – a problem which may have been escalating. Regulars and mendicants similarly might petition a secular authority: Megan Armstrong's study of the 16th-century Parlement of Paris points to thirty examples (the earliest dating from 1500–2) in which Franciscan, Dominican, Carmelite, and Augustinian communities pursued disputes against their superiors. Fourteen cases were initiated by superiors against their community.[86] In his study of Strasbourg, Francis Rapp also discusses late 15th-century examples of quarrels between superiors and subordinates (sometimes over financial issues and often involving canons of some stripe) that became protracted problems that destabilized local politics, challenged the bishop's authority, led to questions about the comportment of all the secular clergy, and sometimes demanded papal attention.[87]

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85 Gonthier, *Déliquance, justice et société*, 162.

86 Megan Armstrong, "Spiritual Reform, Mendicant Autonomy, and State Formation: French Franciscan Disputes before the Parlement of Paris, 1500–1600," *French Historical Studies* 25:3 (2002): 513.

87 Francis Rapp, *Reformes et Reformation à Strasbourg: Église et société dans le diocèse de Strasbourg, 1450–1525*, Collections de L'Institute des Hautes Études Alsaciennes XIII (Paris: Editions Ophrys, 1974), 218–221.

A similar collection of problems could have been gestating at Carpentras. A conflict was already in motion by March 1487. On 16 March, the canon Dominus Johan de Riparia was accused of attacking the Dominus Claude Guiffredi, his prior and superior. According to the court he "leapt from words to blows."[88] The case was still in motion when the canons as a group were accused of an act of disobedience during a general procession in honor of the St. Andrieu.[89] Little research exists on this small group of Augustinian canons. The notary referred to the cited clerics as "cloistered" and as "canons regular."[90] Their convent was located at Pernes – just a bit outside the walls of Carpentras – and their number in the court's records (five canons and a priest who served them) appears to have been stable from the order's establishment there in 1342.[91] Chiffoleau concludes that they exercised a circumscribed role in local religious practices compared to other local mendicant orders in the diocese, like the Dominicans (founded at Carpentras) or Franciscans (at Monteux and L'Isle), and also competed with a variety of small religious communities who had the advantage of older, 13th-century foundations.[92] Research by Chiffoleau on testaments indicates that they, like similarly small mendicant orders in the region, exercised a local sphere of influence in their neighboring town and to a lesser extent, among the surrounding rural localities (receiving confessions and bequests).[93] In general, these modest mendicant groups exercised limited roles in the political and socio-economic life of the Comtat. He suggests that this was due in part to the dominance of large numbers of secular priests situated in the major towns. Canons were particularly valued intercessors among artisans: their modest influence and tendency to draw income from the less wealthy

88 ADV B 3334 fol. 24r, 16 March 1487 (Fisc. c. de Riparia). See Chapter One, above, for details.

89 The prosecution was finally left without a further day assigned, though the canons were fined as a group; see ADV B 3334 fol. 64v, 1 July 1487 (Fisc. c. de Riparia).

90 For examples of the noting of their status, see fol. 111v, 17 December 1487 and fol. 158r, 26 August 1488 (Fisc. c. Rossolet).

91 Jacques Chiffoleau, *La compatibilité de l'Au-Delà: Les hommes, la mort, et la religion dans la région d'Avignon à la fin du Moyen Âge*, Collection de l'École Française de Rome 47 (Rome: École Française de Rome, 1980), 253. Unfortunately, most of Chiffoleau research focuses on areas outside this diocese (in Apt, Orange and Avignon). He notes, too, that the lack of visitations (between 1448 and 1496) makes it more difficult to measure the situation of the diocese, its canons and the relationship of both to the laity (idem, 242). Its closeness to Carpentras, yet placement just outside it, is suggested in ADV B 3335, fol. 29r, 13 April 1486 (de Stagneri c. Guiffredi). It was typical of Avignon and the Comtat for mendicants to be situated close to the major towns (Chiffoleau, *L'Au Dela*, 253).

92 Ibid., 252–53.

93 Ibid., 254–62.

sectors or society, in comparison to the local Dominicans and Franciscans, may explain the frustration with their finances and prestige indicated below.

On 16 May, Stephan Rosselet, Paulo Pichor, and the rest of the canons were charged for deliberately and pre-meditatively interrupting a procession and abandoning the other priests marching. The judge of the criminal court, who was in attendance at the procession, saw them and gathered them together, exhorting them to return. After an initial warning, he was forced to call them back to the route three times. In court, the canons appeared as a group and admitted that they had interrupted the procession once as a group, but denied that they had been warned formally and claimed that only Stephan was called back multiple times. Their wandering appeared to have been a deliberate attempt to re-direct the procession or reject the route of the itinerary, as alluded to by their request that the itinerary in honor of St. Andrieu be altered to include a tapestry given by an heir. The judge excommunicated the canons and fined them 25 livres of silver.[94] Two of them – Paulo and Stephan – questioned whether the judge was actually their master in this affair (i.e., whether he could claim competence) and demanded an appeal to the governor, but were ignored. It also may have irked them that the sitting judge was in audience, rather than the official, or they imagined they could challenge him in particular. And by the time of that audience, new problems had arisen among them: one of their numbers, Paul, was charged in late July with stealing grain from the prior's cellar and then insulting the prior's servant.[95]

By December, their ill-discipline finally resulted in an accusation by their prior, Claude, that the canons (Johan, Paulo, Stephan, as well as the canon Siffrein de Pulcraquercus, the sacristan Andre, and the priest serving the cloister, Claude Ubiton) had "rebelled spiritually" through the "many grave injuries and detestable disgraces of their ways of life," some of which he was said to have specified but were not recorded here.[96] After alluding to a written complaint in which each canon was named (presumably by their superior), the court charged each of them *ex officio*. Their superior, Claude, claimed that the canons failed to respect him and he sought to bring them to account.

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94 ADV B 3334 fol. 40r–v, 16 May 1487 (Fisc. c. Rosselet, Pichor and All the Canons of Grasse). The two men requested an appeal to the governor, but apparently this was not pursued. The route followed the walls of Carpentras, but they wanted it to deviate to include a march around a tapestry of the heir of Stephan Scallamiati.

95 ADV B 3334 fol. 73v, 23 July 1487 (Fisc. c. Pichor). See Chapter One, below, for a discussion of the case.

96 ADV B 3334 fol. 111v, 17 December 1487 (Guiffredi c. Canons of Saint Marie of Grasse). See transcription in Appendix, Text 6.

Furthermore, it came to light that the canons were leading women to common eating houses (we do not know if Claude accused them of this or not). The canons returned to court.

In their group defense, they engaged in the type of strategy illustrated in Chapter Two, defending their actions as legitimate responses to the poor behavior of the prior, who they implied should be treated as their enemy. The canons had much for which to account, but they were ready to vent their own grievances. Surely, they protested, they would not have injured Claude had they not been provoked by the latter, who "pursued them with hatred and malevolence." As proof of his hostility towards them, they explained that Claude deigned neither to eat nor to drink with them, which suggested his lack of friendship with them.[97] As Gauvard notes, eating, and drinking were part of the "*rituel de convivialité*" and a process through which the bonds of peace were maintained or re-affirmed. Sharing food and drink was a constructive act forming the foundation of cohesive social bonds.[98] The canons also referred to the "words and writings" he sent against them (presumably in complaints to this judge) in order to reinforce their claim of enmity, to suggest that he was out to get them and his claims were suspect. As Robert Bartlett explains, people recognized that legal action created a formal form of enmity.[99]

Their superior, they said, also refused them their allowance and was cheap – an affront to their status as well as economic survival. They opined that provisions of pay were less than what one would be obliged to pay "farm laborers and other most common persons, much less religious persons." He "disparaged and defamed" them and did other detestable things. For this, they begged justice.[100] Lay and clergy alike criticized the appetite for wealth among priests and regulars. Preachers like Guillaume Pepin, who was active before and after the Reformation, complained that "vows of poverty were no longer observed" and negligent superiors were allotting too much money to their subordinates.[101] The claim that the canons *needed* to eat elsewhere – and with women, to boot – seems a risky maneuver: the preacher Pepin also specified that the wealth of clergymen often was wasted on gambling and on women whose desire for

97 Ibid.

98 Claude Gauvard, *Violence et ordre public au Moyen Âge* (Paris: Picard, 2005), 194–201.

99 Robert Bartlett explains that initiating legal proceedings against another was an act of hatred in "'Mortal Enmities': The Legal Aspect of Hostility in the Middle Ages," T. Jones Pierce Lecture, University of Wales (Aberystwyth, 1998).

100 See note 78.

101 Taylor, *Soldiers of Christ*, 144.

money was said to be insatiable.[102] Secular and religious figures, ranging from Boccacio, Petrarch, Deschampes, Catherine of Sienna, to Pope Clement V, to name but a few, criticized the lust for luxury among the mendicant orders.[103] Eating with women in common houses of dubious repute ran afoul of such cautions as found in the *Summa Elegantius* (anon.) which specified that clergy should not eat, nor especially drink, with women because fornication often followed the convivial relations shared at the table.[104]

The canons' narrative is similar to those seen in assault cases: they offered a tale that made them victims, casting Claude as a villain who failed to fulfill his role as their superior. His coldness and economic affronts were portrayed as attacks on their group and their dramatic phrasing suggested that his behavior was beyond the pale for a superior. In this tale, he was the primary source of the public disorder and was to blame for their actions. Claude denigrated the honor of his fellow churchmen. The canons must have assumed that the judge would agree that they deserved a higher standard of living, making a bid that their fellow cleric and judge would sympathize. The judge chose simply to warn them (each) not to lead women to common eating houses, or face being incarcerated as a group and excommunicated.

It behooved judges, if they could, to nip conflicts in the bud to assure continued control over what could be a difficult jurisdictional arena and to avoid further embarrassment and confusion. Remember that the disorderly canons also attempted to circumvent this court's authority entirely. The canons' quarrel was one which involved a dispute over concerns unique to them, but the conflict was just one of several that involved clerics misbehaving in public and that, both tacitly and explicitly, challenged their clerical authorities. Yet again, we see that this court was an arena for disciplining clerics, especially unruly ones whose actions proved more than their immediate superiors could handle, and was therefore a crucial part of the system for enforcing clerical hierarchy and obedience.

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102 Ibid.

103 See also brief summary in Robert Gane, *Le Chapître de Notre-Dame de Paris au XIV^e siècle: Étude sociale d'un groupe canonial* (Saint-Etienne: Publications de l'Université de Saint-Etienne, 1999), 179–81.

104 *Summa Elegantius* 2.39, (ed.) Fransen and Kuttner 1:60: "*Post uinum Venus, post carnem, carnalia*," quoted in Brundage, *Law, Sex and Christian Society*, 314, note, 270.

3.5 Anti-Jewish Activities and Threats to the Political Inter-religious Status Quo

But clerics engaged in still greater inflammatory acts that jeopardized authorities: through their words and deeds they threatened the increasingly tenuous religious status quo the bishop sought to preserve, going so far as to publicly reject the Comtat's policies. In the Comtat, papal policy pertaining to the Jews was, by relative measure, one of few restrictions and remarkable protections. In line with the teachings of Paul's letters to the Romans and St. Augustine, the popes traditionally maintained that Jews had a place within Christian society as vestiges of the Old Testament and witnesses to Christ's triumph and the Jews' own defeat.[105] But their presence was an uncomfortable and challenged one. In the 13th century, many fashioned the Jews as Christ's killers, their presence adding a visceral, visual dimension to the celebration of the Passion.[106] The rhetoric of the Fourth Lateran Council of 1215 portrays them as cancers within the pure Christian body and associates them with the obstinate heretic and contagious leper. Popular accusations of their purported perfidy grew over the next two centuries with the development of the myth of blood libel and charges that Jews had poisoned wells during the Black Death. Despite an expanding discourse of opprobrium, increasing popular hostility on the civic level, and violent acts of aggression committed by clerics and laypeople alike, the popes continued to allow Jews to live within the states under their control, and often protected them. In civil proceedings, too, this court recognized their rights and duties as litigants on a regular basis, helping to preserve their economic roles in the community.

In Carpentras, the Jews had been vassals of the bishop since the Holy See had taken possession of the Comtat in the 13th century.[107] The bishop continued to receive their payments and homage throughout the Middle Ages, though by the 15th century the liberties granted to them had dwindled. Only John XXII

105 Kenneth R. Stow, "The Avignonese Papacy, or, after the Expulsions," in *From Witches to Witchcraft: Jews and Judaism in Medieval Christian Thought*, (ed.) Jeffrey Cohen (Wiesbaden: Harrasowitz Verlag, 1996), 275–80.

106 For synopses of these developments, see: Robert Chazan, "The Deteriorating Image of the Jews – Twelfth and Thirteenth Centuries," in *Christendom and its Discontents: Exclusion, Persecution, and Rebellion, 1000–1500*, (eds.) Scott L. Waugh and Peter D. Diehn (Cambridge: Cambridge University Press, 1996), 220–33; Gavin Langmuir, "The Tortures of the Body of Christ," in idem, 287–309; and, Miri Rubin, *Gentile Tales: The Narrative Assault on Later Medieval Jews* (New Haven, N.J. and London: Yale University Press, 1999).

107 Marianne Calmann, *The Carrière of Carpentras*, Littman Library of Jewish Civilization (New York: Oxford University Press, 1984), 25–28.

attempted an expulsion in his holdings (~1322), but it was a mostly abortive effort that was not applied at Avignon and was retracted by 1343.[108] Though this expulsion was unsuccessful, Kenneth Stow notes that this policy marked a "juncture" in an inconsistent and ambivalent papal policy: the equilibrium of opprobrium and tolerance proved increasingly unworkable.[109] Over the next two centuries, contact – the sharing of food, sex, and space – was increasingly limited by local ordinances and papal bulls. The protection, or "refuge" as Claude Mosse puts it, that the pontifical states provided to Jews in the 13th and 14th centuries was always a contested one.[110]

In the 15th century, conditions deteriorated for the Jews in the Comtat as inter-religious violence escalated and calls for expulsion or segregation became more vocal. René Moulinas illustrates that before the later 17th century, Jews could work almost without restriction, played an active role in the economy (in credit and trade), and had survived well as a community.[111] However, a "Golden Age" for the Jews of the Midi began to wane in the later 15th century.[112] The rectors governing the Comtat supported benevolent policies and employed Jews to perform public duties for them, practices that upset Comtadine citizens. Routine complaints about allegedly unfair commercial practices and the increase of the Jewish population recur in the municipal registers of the 1440s and 1450s. In response to such complaints, the États du Comtat appealed to Pope Pius II in 1459.[113] Pope Pius II issued two bulls declaring that the Jews should live in a separate quarter and keep separate abattoirs, and that Christians should not enter into contracts with Jews. He soon retracted the bulls after Jewish delegates pleaded their case in Rome, but the papal legate did support part of the program: a delimited quarter for Jewish residency was to be maintained, and in it, windows overlooking Christians must be small and placed high in the building so that Jews could not look down upon Christians.[114]

In the mid-15th century, a series of riots – spurred by increasing Jewish immigration and Christian populist agitation – demonstrated the growing friction between the two communities. In the 1450s and 1460s, four riots against

108 Stow, "The Avignonese Papacy," 387–96. René Moulinas, *Les Juifs du pape en France: les communités d'Avginon et du Comtat Venaissin aux XVII^e^ et XVIII^e^ siècles* (Privat: Paris, 1981), 25.

109 Stow, "The Avignonese Papacy," 296.

110 Claude Mosse, "Préface," in Moulinas, *Les juifs du Pape*, 6.

111 Moulinas, *Les Juifs du Pape*, 18, 33.

112 Ibid., 20.

113 Calmann, *The Carrière*, 25.

114 Ibid.

Jews broke out in the major towns of the diocese of Carpentras, one of which resulted in more than sixty victims.[115] The riots combined religious zeal with economic resentment – particularly that of agricultural laborers who were indebted to Jewish creditors and faced competition from immigrants. Most actions were led and conducted by laypeople, with the notable exception of the 1460 attack on the Jews of Carpentras led by a notary (a member of the lower clergy) and his three sons. Responding to these waves of violence in the 15th century, popes repeatedly reminded their citizens that the Comtadine Jews were not to be harassed in their persons or goods. Typically, local secular or ecclesiastical authorities intervened to end disruptions and warned against future outbreaks. But secular leaders nevertheless exhibited continued discontent with the rector's Comtadine policies. In 1460, representatives of Pernes asked the rector to prohibit Jews from living in their town, so that dangers and scandals might be avoided.[116]

Anger against Jews continued to flare in neighboring Provence and in turn helped fan the flames in the Comtat. After Louis XI confirmed their privileges in 1482, large scale anti-Jewish riots broke out in the Provencal towns of Arles, Aix, Tarascon, Digne, and Manosque.[117] Aware of the violence inflicted upon the Jews of Arles, the rector warned the Comtadine municipalities to guard against similar developments in their region. A representative of Pernes responded by asserting that the Jews were responsible for their own defense. Carpentras opted to establish a guard of twelve armed men to assure the so-called 'protection' of their Jewish quarter while emotions ran high. In the 1480s, arguments to restrict further or expel the Jews revived. In the wake of their expulsion from Provence in 1485, Jewish immigration to the Comtat and their increasing number of Jewish residents on what were traditionally Christian streets led to local complaint and a major policy shift, though the popes continued to assure their protected presence.[118]

In October 1486, the town council of Carpentras made more permanent residential limits. They decided to clear the Rue de la Galaffe which was deemed overpopulated by Jews and too close to Christians. To better isolate the Jews, they were to live on just one 80 meter long street with a chain and a guard

115 Moulinas, *Juifs du Pape*, 26–28.

116 Ibid., 26.

117 Moulinas, *Les Juifs du Pape*, 26. Charles VIII expelled the Jews from Provence in 1498 and his successor Louis XII renewed their expulsion in 1500–01. Expelled Jews continued to emigrate to the Comtat.

118 Calmann, *The Carrière*, 26–27.

at each end.[119] After a unanimous vote, the council adopted the plan and in November the vice legate and rector approved the project.[120] The Jews acquiesced and added new gates that included a door with small windows and locks on the inside.[121] Here, as in most towns, Jews were forbidden to leave these areas during major Christian feasts.[122] Over the next few decades several other municipalities followed suit.[123]

The role of local clerics in the violent acts of the mid-century is unclear. However, according to complaints by Jews, when priests conducted processions through their streets, their entourages habitually threw stones at passing Jews or their houses. Responding to a request of the Jews to the civic council of Carpentras, the rector forbade processions on their street in March 1487. While citizens expressed their concerns through restrictive local legislation, in the diocesan court's records, we find discontented clerics expressed their anti-Jewish sentiments through violence, public insults, and diatribes. We might speculate that the antagonistic culture here was fostered by clergy, too, despite the example set by the ecclesiastical administration and the bishop (including his judge's fair treatment of Jews in his courtroom, to be discussed in Chapter Four). Clerical activism was prominent in areas with sizeable Jewish populations, such as Iberia, despite efforts by civic and papal governance to regulate it. Given the history and circumstances of this region, such activity was, unsurprisingly, a threat worthy of redress by diocesan authorities. That threat was compounded when such activity criticized a public policy supported by the highest ecclesiastical authorities.

A few of the court's citations suggest how overlapping groups of clergy and laypeople challenged a policy of peaceful coexistence through their actions and may have been unified by their shared hatred of the Jews. On 16 April 1487, the priests Domini Baudi Arnaud, Johan Balneol, Johan de Murs, Johan Odoard, and Amadeus Taxil, as well as the clerics Johan Grisi and Johan Joli, were each indicted for "various digressions and insults" in a house of Jews during the previous weekend.[124] All the men hailed from Mazan, the diocese's second

119 Dubled, *Carpentras*, 57.

120 Calmann, *The Carrière*, 27.

121 Ibid.

122 For the most exhaustive history of Jews in the diocese, see: René Moulinas, *Les Juifs du pape*.

123 Moulinas, *Les Juifs du Pape*, 33–37.

124 ADV B 3334 fol. 28v, 16 April 1487 (Fisc. c. Arnaud); fol. 29r, 16 April 1487 (Fisc. c. Balneol); fol. 29r, 16 April 1487 (Fisc. c. de Murs, Jr.); fol. 29r, 16 April 1487 (Fisc. c. Odoard); fol. 32v. 26 April 148 (Fisc. c. Taxil); fol. 29r, 16 April 1487 (Fisc. c. Grisi); fol. 29r, 16 April 1487 (Fisc. c. Joli). I have categorized as a verbal attack.

biggest town, on the border of Carpentras. The factional solidarity of this lot was affirmed in May, when Amadeus Taxil, Johan Odoard, Baudin Arnaud, Johan Balneol, and Johan Grisi all appeared together to confirm the assignment of a shared proctor, and, later, when Johan Odoard's acted as a guarantor to Johan Grisi.[125] The case simply dropped from the records by early June, but members of this group participated in the capture and forced baptism the following year conducted by Dominus Johan de Murs, also of Mazan.[126]

On October 2, 1488, the cleric Johan Asson, with the aid of a Balthesar Guillaudi and other men of his faction, seized a young Jew "by furtiveness and force" at the house of Dominus Johan Odoard.[127] Asson dragged him past Taxil's door (perhaps encouraging the latter to join in), then past the city gates and on to the church of Mazan. By the time they reached the church, the group had grown in number. Close by the church, the Johan de Murs encountered a multitude of men, according to his testimony (which the court identified as de Murs' "faction"). En masse, they cried out that he should baptize the Jew. Under interrogation in court the next day, de Murs denied knowing that the Jew was deceived or brought furtively. Asson and de Murs were cited for additional new offenses, but their substance is poorly recorded. One of the charges included a violent crime in which Asson – along with Odoard – was charged with the brutal beating of a man named Peire.[128] Despite the scheduling of further audiences, the cases against Asson and de Murs do not recur after October and November.

Shared anti-Jewish sentiment linked this group in Mazan to another faction in Carpentras, providing another angle to the vicious beating of Astorg de Petra. Cristofor Daniel – aided by Bertran Arnaud and the latter's lord, Johan de Sancto Romano – planned and executed the beating of the "neophyte" priest Astorg.[129] His status as a possible convert was never addressed in the narrative of the court, but may have played a role in the initiation of hostilities between him and his assailants. Bertran was a resident of Mazan and possibly connected to this group of malefactors. Cristofor and Johan both acted as guarantors for Johan de Murs (the first in April for the verbal attack on the Jews,

125 ADV B 3334 fol. 32r, 26 April 1487 (Fisc. c. Odoard).

126 ADV B 3334 fol. 161r, 3 October 1488 (Fisc. c. de Murs, Jr.). He later was labeled as a vicar.

127 ADV B 3334 fol. 161r, 3 October 1488 (Fisc. c. de Murs, Jr.).

128 ADV B 3334 fol. 164r, 10 October 1488 (Fisc. c. Asson).

129 The trial over this beating was discussed in the previous chapter to illustrate the escalation of a fight.

the second in October for the forced baptism). One can conjecture that shared sympathies may have played a role in their mutual aid.[130]

The records of the ecclesiastical court of Carpentras suggests clergy played a prominent, even leading, role in anti-Jewish activities just as found by David Niremberg for Iberia, where clerics often participated in or led attacks against Jews and composed almost all the participants in the Easter-time ritual stoning of Jewish quarters.[131] In the Comtat, heretofore, most anti-Jewish activity had been led by the laity as far as the records indicate, but clerics may have been becoming prominent voices of criticism. The very relative comfort of the status quo was challenged by fractious clerks even after new restrictions were placed upon the Jews in 1486. The stricter enclosure established in Carpentras by civic authorities in tandem with papal judges certainly did not resolve tensions and divided the clergy.

One priest, Antonio Arbori, though unconnected to the above acts, went so far as to openly criticize the town's Jewish policy and its policymakers. In this court's records, few verbal attacks targeted clerics in higher orders: those attacks were considered especially grave, particularly when committed in a public venue. Antonio challenged the decisions of those who exercised authority over the city of Carpentras, the diocese, and the Comtat. Furthermore, he urged further changes that would foster more grave public disorders, and did so during the emotionally heated Easter season, less than a year after the momentous policy changes in Carpentras. Merely a month before, the rector also formally approved additional safeguards proposed by the Jews for their *carrière des Juifs*, including a prohibition against Christians inside the street at night, provisions for increased housing on a vertical scale, and the construction of a wall behind their synagogue that would enclose a passageway with an exit into the town, and the barring of windows. All windows of houses shared with Christians were to be either walled or barred, as well.[132] The rector anticipated trouble, or more likely, bowed to demands to separate and further ghettoize the Jews.

According to de Stagneri, the bishop's treasurer and a proctor of the court, on 30 April 1487, after the ringing of the *Ave Maria*, and just as secular and liturgical business would be concluding for many in Carpentras, an impassioned Antonio addressed his fellow citizens in front of the warehouse of a local

130 ADV B 3334 fol. 33v. 28 April 1487 and fol. 163v, 10 October 1488 (Fisc. c. de Murs, Jr.).

131 David Nirenberg, *Communities of Violence: Persecution of Minorities in the Middle Ages* (Princeton: Princeton University Press, 1996), 207–14, 221–30.

132 Calmann, *The Carrère*, 27.

notary.[133] "Assailing the Pope with many words," Antonio said that the pope should compel the Jews of the city of Carpentras to participate in the Christian feast. But not content with that alone, Antonio piled more evil words onto the pope and the Jews and addressed "the populace as they passed, he insulted the Jews and committed scandal . . . speaking in a raised voice, vociferously, so that all could understand." He insisted that the Jews not be allowed to return to their confinement, but should be driven out entirely. He seemed to imagine a scenario in which the Christian, after the mass, with their emotions whetted by the visible presence of the Jews among them, would experience a cathartic ritual expulsion of the Jews after they had fulfilled their role as living reminders of the Passion.

The proctor asserted that in his diatribe Antonio attacked their leader, committed the "crime *lèse-majesté*" and incited scandal. He not only criticized the pope, but mentioned civic leaders by name. The proctor asked the judge whether it "should be permitted for anyone to attack our sacred lord, the pope, much less his men and their governance?" and asserted that in his "wickedness," Antonio "accumulated evils against the lord Pope" and condemned a "praiseworthy decision" to enclose the Jews, a decision consulted and deliberated by the town and then decreed by the governor and regent of the Comtat.

In the record, Antonio responded to each accusation directly (by their number in the titles of inquisition) and confessed to one of them only, in sum basically admitting that he had said something like that, though he appeared to object to the phrasing of the accusation and rejected the notion that he had directly insulted anyone (a smart move legally). He denied saying that the pope *should* collect the Jews to honor the feast with the Christians, but added his opinion (again, with some legalistic caution) that the pope had the power to do so and if it should please him, he could do so as the king of France had done. This seems to be more of a cheeky response than one recognizing the legitimate scope of the pope's authority and his own lack of authority in dictating what the pontiff should or should not do. Note that the judge did not facilitate a broader rhetorical space for Antonio here, though the priest does attempt to reshape the narrative by disputing the phrasing of the accusations. We can only speculate why this was the case. Did the gravity and complexity of his offense (with its multiple speech acts) demand a careful attention to each accusation? Unlike other accused parties, Antonio did not present his own narrative and took what may have been the most cautious approach, but

133 ADV B 3334 fol. 33v–34r, 2 April 1487 (Fisc. c. Arbori). See transcription in Appendix, Text 7.

maybe he intended to present one in the next phase of the trial. The judge does not question Antonio's understanding of proper behavior, nor does he correct him in a confessional manner, nor guide him down a path to mitigate or downplay his actions. The judge scheduled an audience in eight days at which time Antonio was to respond to all of this in a defense and released him under the promise and obligation to appear. There is no sense that abjuration was or was not the goal yet, and as he did not return to present a defense, we are left unfulfilled on this account, and reminded of the limits of the records.

Clearly, in the eyes of the court, engaging in public criticism of authorities was an abrogation of good order, as was indicated by the charge of *lèse-majesté*, an accusation which was preserved in French by the notary. Antonio marred he honor of both spiritual and temporal authorities and questioned their authority. The bishop, specifically, was the regulator and protector of Jewish interests: his curia decided in which court Jewish cases fell and routinely adjudicated their debt contracts with Christians, treating them much as they did any other litigants.[134] When convenient, the bishop's Jewish vassals were construed as his clients, a position Jews secured through homage and a payment to the curia. Attacks on his dependents represented a defiance of his lordly power. Equally, this critique targeted the pope, who authorized the local decision. Elsewhere, royals had routinely condemned attacks upon the king's Jews as attack on royal majesty.[135] Attacking the pope was hardly an unprecedented violation by priests. As Larissa Taylor's study of preaching in 15th- and 16th-century France illustrates, preachers commented on the popes' simony, nepotism, and ill-governance of monasteries, as well as their free use of dispensations and indulgences.[136] On the other hand, she also finds that overt anti-Semitism had become rare in this period in French preaching.[137] But the growing population of Jews in the diocese had led to increasing tensions and debate about the issue, reinvigorating anti-Jewish sentiments and activities.

It seems likely that, added to the affront to the pope, the court's functionaries understandably feared that Antonio's behavior posed a direct threat to public order and safety. Unregulated violence ensued from these sorts of rants in Iberia, as Nirenberg illustrates. Coexistence itself was predicated on

134 See Chapter Four.

135 Nirenberg, *Communities of Violence*, 222.

136 Taylor, *Soldiers of Christ*, 143.

137 Ibid., 152–55. Sermons not uncommonly made references to the Jews: allusions to Jews and other non-Christians, in conjunction with scriptural references, were used to shame Christians to reform their lives.

this ritualized violence.[138] Good Friday Passion cycles "whipped up emotional excitement" through their inclusion of Jewish characters, as did rituals of violence against Jews during the Holy Week in Iberia.[139] He offers vivid examples of such violence in Aragon, Majorca, and Catalonia. Authorities attempted to combat the problem by guarding Jewish neighborhoods and threatening heavy fines to those who harmed the Jews. But Passion plays "demanded the participation of Jews, either real or impersonated by Christians."[140] For Nirenberg, re-creations of the Passion began with a violent integration of communities through vengeance and ended in an affirmation of difference and boundaries. These acts of violence routinely led to nasty encounters with and attacks upon authorities attempting to stem escalating riots. The later disappearance of the Jews undermined the distinctive value and meaning of Christian identity and blurred the boundaries of Christian and Jew.[141]

The choice by ecclesiastical governors to protect their Jewish communities should not be taken for granted as a standard policy in a pontifical state, and as suggested above, it could shift even in this "refuge." While each papal territory had its own history of ambivalence and violence towards Jews, all shared in a Europe-wide discourse on the evils of Jews. Whatever the papal protections, the character of the bishop, his diocese, and unique local circumstances set the tone, particularly when it came to the diocesan regulation of inter-religious violence. A contentious legal proceeding in Trent, a papal principality in the Holy Roman Empire, provides a dramatic comparative example illustrating how another ecclesiastical governor responded to and shaped Christian and Jewish interaction in his capacity as a legal authority.

Consider the affair at Trent described by Ronald Po-Chia Hsia. In response to a ritual murder accusation against local Jews in 1475, lord-bishop Hinderbach of Trent opened an extraordinary legal proceeding against them and from that year on promoted a cult for the allegedly martyred child, Simon. Po-Chia Hsia stresses that the way the drama at Trent unfolded was based not only on the whims of a bishop who openly loathed the mingling of Jews and Christians, but in a Christian ethnography of alleged Jewish rites, reminding us that

138 Nirenberg, *Communities of Violence*, 9.

139 For examples of Easter season violence against Jews, see Nirenberg, *Communities of Violence*, 205–24.

140 Ibid., 215.

141 David Nirenberg, "Conversion, Sex and Segregation," *American Historical Review* (2002): 1079.

throughout Europe Jews were portrayed as the quintessential internal enemy.[142] But the bishop's legal machinations (and the cult) came into question after the Jews of Rome, on behalf of their co-religionists in Trent, appealed to Pope Sixtus IV, who warned the bishop to suspend the trial until the arrival of a papal envoy.[143] Though the envoy was instructed to cooperate with the bishop, the latter's hostile behavior and his arbitrary judicial actions against Jews (imprisonment and confiscation of goods) compelled the envoy to countermand the bishop's orders and encouraged him to open his own investigation.[144] Soon after, Sixtus ordered six cardinals to examine the trial, and after receiving their report, threatened the bishop with suspension of office should he continue to arbitrarily act against Jews.[145] The politically savvy bishop was able to defend himself through his own partisan affiliates at Rome, despite a long-standing policy of papal disapproval of trials and local cults founded on ritual murder accusations. In the end, Sixtus IV declared in a 1478 papal bull that the trial conformed to legal propriety; he praised the fervor of the bishop, but warned him neither to allow ritual murder trials (as prohibited in Innocent's Decretum of 1247), nor to promote a cult of the murdered child, nor to disobey canonical prescriptions of the Holy See. He specified that no Christian should, without papal judgment, kill or mutilate Jews, extort money from them, or prevent them from practicing their religion. He also ordered that baptized children of Jews be reunited with their mothers, thereby rejecting the forced conversions that had been conducted.[146] Clearly, the pope sought to assert papal authority over inter-religious matters, particularly related legal proceedings.

Taking heed of recurring problems, Pope Innocent VIII may have exercised a stronger hand at Carpentras or ensured that its servants would conform to canonical norms and papal policy, particularly ones recently made with his approval. He might have appreciated the benefits of co-existence at Carpentras and Rome where Jews and Christians lived together in relative peace and maintained strong financial, legal, and social contact. No doubt, he must have appreciated the financial contribution and homage to him in Rome, and to

142 Ronald Po-Chia Hsia, *Trent 1475: Stories of a Ritual Murder Trial* (New Haven, N.J: Yale University Press in Cooperation with Yeshiva University, 1992), 4–13. He also describes how the bishop's anti-Jewish sentiments in general were grounded in his religious formation and education in France, Italy and Germany (sermons, lectures, etc.), a formation to which other clerics were subject.

143 Ibid., 69–70.

144 Ibid., 71–80.

145 Ibid., 117.

146 Ibid., 127–29. Promoted by the unrepentant bishop and the Franciscans, the cult grew nonetheless and was spread into northern Italy, Austria, and southern Germany.

the bishop of Carpentras.[147] Unchecked, public diatribes, like the one made by the priest on his soapbox, and acts of organized illicit violence – especially by its own members – undermined ecclesiastical authorities (and others serving them), a tenuous status quo in its dual-religious communities, and made vivid the lack of conformity among, and disciplinary control over, its members. Yet, again, the judge did not punish Antonio harshly, though this may reflect judicial norms at Carpentras more than sympathy for the accused or his rhetoric.

3.6 Religious Fraud or Spreading False Doctrine

Clergy could also take dangerous spiritual leadership roles by spreading false beliefs or committing religious fraud. As was typical of church courts in general, few cases addressed speech acts or behavior that were blasphemous or heterodox (heresy, of course, was subject to exceptional trials).[148] Few heresy cases have been found for Avignon or the Comtat after the 13th century. Chiffoleau finds a few traces of beliefs associated with the Vaudois, both in a small number of 14th-century inquisitions and within citations (in normal proceedings) for other offenses like theft; while few were executed, others faced large fines and the confiscation of their goods.[149] In general, where orthodoxy was concerned, the popes recognized three key threats: the Spirituals, the Vaudois, and magic. None of the cases at Carpentras contain evidence those threats. Only

147 Ibid., 119. See also Kenneth R. Stow, *Taxation, Community and the State: Jews and the Fiscal Foundations of the Early Modern State* (Stuttgart: A. Hiersemann, 1982), 7; Charles L. Stinger, *Renaissance in Rome* (Bloomington, IL: Indiana University Press, 1985), 53–54.

148 This is true both at the archidiaconal and diocesan level. Most works offer little or no discussion of this caseload, barring exceptional cases. Our best sources include: Chiffoleau, *Justices du pape*, 204–7 and 266–68; Pommeray, *L'officialité archdiaconale de Paris*, 414–20; Gonthier, *Délinquance, Justice et Société*, 148, 247–48. Wunderli, 123–26. Under the blanket discussion of irreligious acts, Pommeray and Chiffoleau consider blasphemy alongside games of chance, which tended to foster blasphemy according to reformers and were often paired in the accusations.

149 Chiffoleau, *Justices du pape*, 197–200. For the earlier period and the decline in heretical groups in the region see: *Le Credo, la morale et l'inquisition en Languedoc au XIII^e siècle,* Cahiers de Fanjeaux 6 (Toulouse: E. Privat, 1971); *Vaudois Languedociens et Pauvres Catholiques*, Cahiers de Fanjeaux 2 (Toulouse: E. Privat, 1967); and, *Franciscans d'Oc: Les "Spirituels" ca. 1280–1324* (Toulouse: Privat, 1975); Malcolm Barber, *The Cathars: Dualists in Languedoc in the High Middle Ages* (Cambridge: Cambridge University Press, 2000). The *cahiers* include the best references to this region.

one case addressed anything suggesting that someone held or transmitted an objectionable belief or object.

Nicolo, a master of the order of St. Bernard, and Dominus Peire Fautin, a cleric and representative of the hospital attached to the Church of St. Mary, faced accusations for a form of religious fraud or unorthodoxy. Their cases were opened on 28 November 1487.[150] According to the court, through actions, words, and documents, they promoted false or unorthodox doctrine. Indeed, they seemed to be involved in some sort of chicanery involving a recently acquired image. The court charged that Nicolo had told a confraternity that he, who had touched the image of the shirt of the Virgin Mary, and that all who touch it, would be safeguarded by Mary from all dangers. He then claimed he held a bull which substantiated this. Furthermore, he was accused of claiming that a pregnant woman who held the image would be free from the risk of aborting. As the court's proctor noted, no such thing could be true.

While he denied he touched the image, Nicolo confessed to the court that he had said the things imputed to him, but that they were not contained in a bull. When prodded, he stated that he had proclaimed these things under the persuasion of Peire, who acted as a representative of a hospital. Nicolo was placed under diocesan arrest until he could secure surety and make his defenses. The record ends for him and Peire bore the brunt of the court's justice.[151] In December he paid a pecuniary sentence of 4 ducats, 3 royal shields, 2 German florins, and 5 florins, after a cache of documents – all presumably fraudulent – were found by the court: a bull of indulgence, letters permitting the opening of a formal complaint at law in fifteen dioceses (most of them in the region), and a letter containing instructions from the king and Peire's proctor. Like those actions in the sections above, all the speech-acts were committed in public or in a church, or, in this last example, affected a wider group of people than just the sinner.

3.7 Conclusion

In general, the upper clergy were held to higher standards and were more likely than the lower clergy to be accused of the offenses considered in this

150 ADV B 3334 fol. 102v–103r, 28 November 1487 (Fisc. c. Nicolo).

151 His case was opened around the same time as Nicolo's; see, ADV B 3334 fol. 102r, 26 November 1487 (Fisc. c. Fautin). For the documents discovered, see fol. 195r, 28 November 1487. For the payment of fines, see fol. 108r, 5 December 1487. Peire affirmed that all his goods had been confiscated.

chapter. The upper clergy also found itself scrutinized for taking leadership roles in anti-Jewish hostilities, and this, too, could have been seen as especially egregious for men in elevated positions of spiritual authority. Most commonly, the judge addressed their sexual offenses and disobedience with warnings and abjuration, and on occasion fines when misbehavior was recurring. But lower clergy might face only abjuration for sexual infractions, too, as we saw with the magister at the opening of the chapter. When it came to the sins associated with sex and disobedience, abjuration may have been preferred, as opposed to the fines more commonly as a reaction to violent crimes. This may indicate a distinction between crime and sin, though it is possible it also reflected the differential treatment of the upper clergy, who were more likely to be charged with such "sins," and lower clergy, who were more likely to be charged with violent crimes.

Here, again at Carpentras cases target clerics primarily, though elsewhere, these offenses were not limited to clergy. And again, this may be due to the lack of parochial visitations, which elsewhere generated complaints against and by the laity for illicit religious and sexual beliefs or behavior; alternatively, secular courts may have claimed competency here and addressed lay offenses. Where traceable, most of the cases at Carpentras emanate from complaints by clerics who were aware of the problem firsthand and reported it to the court, suggesting some internal policing in an intensively interactive environment. Several of the illicit speech-acts occurred during public arguments that were reported to the court.

In this chapter and the last we have seen clerical behavior at odds with the model that the Church wished to uphold, though one that is hardly shocking. Scholars of late medieval religion have painted a vivid picture of moral crisis among the laity and poor pastoral care by the Church. Étienne Delaruelle describes a fearful and morbid populace shaken by suffering and everyday violence for whom belief and ritual provided only partial alleviation.[152] Opinions about the clergy, who provided some relief for these woes, are equally grim.

152 Étienne Delaruelle, *La piété populaire au moyen âge* (Turin: Bottega d'Erasmo, 1975). Some historians depict a more positive, active laity. John Bossy, for instances, portrays a late-medieval laity that was creatively and successfully coping though heresies which were the "effervescence of orthodoxy," but ones which a rigid and unimaginative Church insisted on excluding; see *Christianity in the West, 1400–1700* (Oxford and New York; Oxford University Press, 1985), 83. Robert Swanson suggests that the fundamental problem of the Church's pastoral care stemmed from the problems of teaching and defending orthodox doctrine despite continued debate about what that doctrine was and how it should be expressed in practical terms. Its laxity was grounded its deliberate refusal to examine what people actually believed, except in cases of exceptionally vociferate deviance,

In his study of the church in the Midi at the end of the reign of Charles VII, Jean-Louis Gazzaniga asserts that the clergy was experiencing a veritable "*crise morale*" due to their poor training and pastoral care: the lower and regular clergy were impoverished and ignorant, while the upper clergy were lured from their confessional roles into secular and commercial services. Debauchery, concubinage, gambling, and disorderly behavior had become pervasive, and loose sexuality was so common it was no longer even scandalous. Concurring with Aubenas' seminal study of the Renaissance church, Gazzaniga maintains that the clergy, in particular the lower clergy, were "children of their century," as lax in their lifestyles as the laity.[153] Southern France, in particular, faced such a clerical crisis, as well as lay demands for stricter standards of clerical conduct.[154]

But studies of later medieval diocesan records in northern and southern France do not always reveal a religious world of discontent and strife, and the keenest disciplinary concerns arose over clerics who failed to perform their sacerdotal duties, caroused in taverns, and to a far lesser extent, were unchaste. According to synodal statutes and parochial visitations, nonresidence, pluralism, careerism, and nepotism were continuing ills in the 15th and 16th centuries. They expected proper marital relations for the laity, yearly confession and communion for all, and regular preaching by the clergy. However, these records often lack the expected forceful complaints against the clergy. In his study of Aix-en-Provence, Jean-Rémy Palanque states that the clergy's morality was not dressed in a "somber tableau" and that cases misconduct was rare (he found only one medieval example).[155] Pastoral visits indicate that denouncements of absenteeism were most prevalent. Parishioners did not always look to the official for aid and attempted to solve their own problems, particularly

choosing not to expose the tensions and variety in belief. See idem, *Religion and Devotion Europe, c. 1215–1515* (Cambridge: Cambridge University Press, 1995), 39–40.

153 Gazzaniga, *L'Église du Midi*, 68–80. While Aubenas illustrates these problems with the clergy in general, he is not so widely condemning of the pre-tridentine episcopate, noting that the higher clergy of the later 15th and early 16th centuries included a "spectrum" of personalities from the best of the "human types" to the worst; see, Roger Aubenas, Le clergé séculier et la vie religieuse populaire," in *Histoire de l'Église depuis les origines jusqu'à nos jours*, vol. 15, *L'Église et la Renaissance* (1449–1517), (ed.) Augustin Fliche and Victor Martin (Bloud and Gay, 1951), 313–31.

154 Gazzaniga, *L'église du midi*, 79–80.

155 Jean-Rémy Palanque, *Le diocèse de Aix-en-Provence*, Histoire des diocèses de France, (eds.) Jean Rémy Planaque and B. Plongeron (Paris: Éditions Beauchesne, 1975), 66–78.

through arrangements with local priests.[156] The faithful were content with and attached to their priest as long as he attended to his services. When the need seemed great, the laity became activists locally.[157] Otherwise, the diocese was well-maintained and typified by a tranquil conformity to traditional practices. As a point of comparison, one can turn to Jean Delameau's study of Rennes, a diocese that he believes was generally well-administered in the 15th century. Synodal statutes suggest that clerical authorities were concerned with simony and the attire and decorum of the clergy, particularly their wont to frequent taverns and engage in blasphemy.[158] From the laity, it sought better behavior and reverence on Church grounds. This suggests that as long as the clergy preformed their ritual and preaching duties, and avoided public scandal, the laity was content.

And public scandal seems to have been a main concern of the court. Just as seen in the previous chapter, the criminal cases focused upon regulating – or at least tracking – the clergy's most scandalous behavior, whether it was their violence, sexual comportment, disobedience, or improper speech-acts. Unlike England and Italy, there is no evidence here that laypeople played a role in the initiation of these cases, though as Helmholz has shown, the *ex officio* process can hide or obscure such intervention from our view.[159] The lack of lay participation in reporting also may have limited the number and scope of the sins considered.

What *was* reported may have reflected the recognition of the limited scope of offenses in which local officials and the court took an interest, a practical juridical boundary. Rarely did this court act, though, before the misbehavior became public and threatened the authority and reputation of the Church and its administrators. This suggests the function of the court, but to be cautious, these were simply the most likely sorts of matters to be reported. Still, the court seems a convenient venue for quietly handling disciplinary issues in which the community might wish to intervene or conflicts inflaming local passions. The court's attention most typically included the arrest (a public act that set an

156 Ibid., 66. For example, one 15th-century community brokered a monetary bargain with priests to maintain effective service on Sundays and feast days; to Palanque this agreement evidences a mentality of reciprocity between local laity and clergy.

157 Ibid., 78. As an example, he mentions the attempts by the syndics of the village of Gardanne, who requested that their seigneur invite an inquisitor to come and exercise his office there.

158 Jean Delameau, *Le diocèse de Rennes*, Histoire des diocèses de France, (eds.) Jean Rémy Planaque and B. Plongeron (Paris: Éditions Beauchesne, 1979), 94–104.

159 Helmholz, "Disciplining the Laity," 4–8.

example), a confessional exchange in the courtroom, mild correction, and, if circumstances were aggravated or the behavior recurred, fines. In some cases, we glean the impression that the court had begun tracking or registering sinners and disputes, facilitating later, and sometimes escalating, censures. But the judge remained content to release most with an oath to behave, and their reintegration into the community was again perhaps indulgent and failed to secure the reconciliation hoped for from a penitential process (as contemporary critics quipped). The punishments and role of the court's justice will be explored further in Chapter Five. That the court often simply registered problems and mediated disputes is true, too, in the civil cases in the next chapter.

CHAPTER 4

Civil Litigation: A Space of Registration and Mediation

4.1 Introduction

In this chapter, we switch gears from the criminal to the civil sphere, and as before, seek to understand its procedural and evidentiary norms and the nature of its caseload. As with the criminal *processus*, we can reconstruct the court's caseload, practices, and participants from a contemporaneous civil register covering 1486 and 1487, though the narrative content of the cases are rarely as rich as in the criminal cases.[1] Unlike the criminal forum, the official almost always presided as acting judge, but here, too, sanctions were mild and court orders and rulings infrequent (though more common than in criminal suits), but the court provided more services in civil cases and perhaps was more "effective" if we accept that its role was not to repress or exert control over the bodies and goods of participants but rather to register disputes, to facilitate and record arbitrated settlements, to authenticate documents, to pressure the fulfillment of contracts, and generally to integrate itself into the regulation and mediation of economic exchanges.

Litigants in civil cases at Carpentras came from all walks of life and both sexes. Most often, individuals initiated lawsuits on their own behalf, but church functionaries also promoted cases concerning church interests. In some instances, cases fell under this court's competency and litigants had no other options, such as in disputes over bequests, wards, church property, tithes, or inheritances. Lay litigants seeking damages against other laypeople for broken contracts could choose among Comtadine courts. Notarial contracts made in the Comtat included a clause indicating that the agreement was actionable in all the courts of the Comtat, temporal or spiritual.[2] They made a choice based on which court would yield the desired results based on their evidence. Personal status could dictate competency, however. Clergy had the privilege of a church court, of course. This court also settled conflicts between Christians and Jews, who were afforded the right of due process by papal bulls such as

1 ADV B 3333. See Introduction for a discussion of the choice of this register.

2 The Comtadine privilege was explained in the introduction. For examples, see ADV E 564 (Albinhaci) 57r, 31 October 1486. ADV E 556 (Raphaelis), 14r, 12 March 1490.

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Sicut judaeis.[3] Unlike criminal cases, accused parties easily could avoid hearings, should they wish; they were not subjected to arrest, though the judge could choose to excommunicate them for nonappearance, which could compromise their legal options in the future (see Chapter 5).

The civil forum included a much wider variety of litigants than the criminal sphere, and its judicial space linked the court to a broader socio-economic space, but shared judicial norms guided how the judges handled and resolved both civil and criminal cases. Each sphere had one notary dedicated to keeping records but shared the same official, a similar ancillary staff, and one of the substitute judges, as discussed in the introduction. This may have fostered a shared legal culture, just as did the tight integration of the Comtat's judicial structure. As has been suggested for criminal prosecution, punishing the delinquent party was not the only – perhaps even primary – goal of the court. In settling civil disputes, the judge occasionally ruled on debts, contracts, rents, and matters of inheritances, but most often he simply recognized contracts, wills, and debts as legitimate. The court mediated disputes and recorded contracts, including those negotiated out-of-court, and could pressure and encourage the two parties to come to agreement with one another. As much as the initiation of a legal suit might antagonize an opponent, litigation opened the possibility for recourse to well-established mediatory practices. The court had to the power to recognize, validate, and record the dispute (and explore the evidence pertaining to it), and provided access to a judge who commanded an array of sanctions, though they were limited to ones we might consider mild.

4.2 Major Distinctions of Civil Procedure

The nature of the dispute alone was not what made a case "civil," but rather the use of "accusatory" procedures or "canonical civil procedure." Aggrieved parties promoted cases in their names against their adversaries and were liable for all the costs of the suit if they lost. The Church's jurisdiction over laypeople was penitential in nature, whether in civil or criminal cases, and grew from the sphere of private penance. Litigants, therefore, were subject to unique ecclesiastical penalties, including excommunication for contumacy. The rules of canonical civil procedure have been amply studied.[4] What studies like this can contribute are examples illustrating the nature of cases and how they were adjudicated in practice.

3 See Introduction.

4 See historiography in the introduction.

Just as was true in criminal cases, we usually catch a larger legal process in motion at the first audience. Cases began when the plaintiff or his proctor presented an oral complaint or written libel. If the complaint was deemed legitimate, the court summoned the defendant. For the lawsuit to be formally joined, the plaintiff needed to produce a written libel containing the names of the parties and judge, a short statement of charges against the defendant, and a request for redress. According to formularies in Comtadine statutes, libels needed the seal and signature of the notary, as well as the proper magistrate, who specified at what hour and audience the demand for redress would be made.[5] At the first audience, a few well-prepared plaintiffs immediately produced their libels with divided articles detailing the complaint.[6] Then, or at the second audience, proctors for the defense requested a copy of the libel and occasionally the letters of summons which was scrutinized for errors (see Chapter One for a fuller discussion of the process of summoning). Some plaintiffs requested a summons at the first audience, and it is rarely clear whether a previous summons had successfully been served or whether the plaintiff only then submitted the information necessary to identify and find the defendant.

Then, the defendant's proctor could propose various dilatory or declinatory exceptions to the case but few clear references to such maneuvers were found.[7] The closest example that could be found was one along the lines of a jurisdictional dilatory exception (*declinatoria fori*) in which litigants involved in an inheritance dispute petitioned that the rector preside and implied that he had competency over the matter. Though the rector, who governed the Comtat, could claim competency in high-value or politically sensitive cases, he simply reinforced the judge's competency by formally "commissioning" him as the

5 Charles Foulquié, *Ètude sur les tribunaux du Comtat-Venaissin pendant la domination des papes* (Nimes: Imprint Coopérative Ouvrière, 1900), 37–38; and David, *L'organisation administrative, financière et judicaire*, 263.

6 For an example of a reference to divided articles, see: ADV B 3333 fol. 125r, 6 February 1487 (Viticole c. Martin).

7 Peremptory exceptions questioned crucial legal or factual issues in the plaintiff's libel, while dilatory exceptions posited that the defendant had committed procedural errors, the judge was biased, or the proctor was not authorized to act. Either could lead to hearings on the merits of the exceptions. Successful peremptory exceptions also could lead the judge to summarily close the cause and release the defendant. If a defendant's exceptions failed, he had to pay the costs for these specific audiences. For a detailed discussion of possible exceptions, see: Fournier, *Les officialités*, 160–69. See also: Donahue, "Introduction," 41–43 and Brundage, *Canon Law*, 130. For an example of an exception to a libel, see: ADV B 3333 fol. 70v, 30 August 1486 (de Stagneri c. Guiffredi).

acting judge, much as he did in the criminal cases in which his competency was invoked (see previous chapters).[8]

Once the parties appeared, exceptions were dismissed, and the libel was formally produced, read aloud before the court and resealed, the trial (*litis contestatio*) began. If the defendant contested the accusations, his or her proctor typically scheduled an audience to reply to the libel.[9] No sacramental formula was used: the defendant simply denied the accusations or confessed, as Paul Fournier and Anne Lefebvre-Teillard found for France.[10] At this moment the competence of the judge was fixed. Though not always recorded here, proctors and litigants then swore an oath of calumny.[11] Plaintiffs swore that they had not brought this claim out of malice or to harass an adversary, while defendants promised to prove their claims honestly, also without malice.[12] If a defendant confessed to the libel at the first audience, the judge could resolve the case quickly: this was most likely to happen when debtors admitted the sum the creditor claimed and the judge ordered them to pay.

In just about all causes extending beyond the first action, the judge allowed delays as freely as he did in criminal cases. Proctors seized every legal advantage they had to prove their case and, in pursuing these delays, may have opened greater opportunities for settlements. The defendant was entitled to twenty-days of delay in order to shape a defense.[13] Typically, the judge delayed cases for one week; the notary placed an "*octo*" below the entry for easy reference to that order. As Lefebvre-Teillard found for northern France, delays were granted frequently throughout the progression of civil cases.[14] As in the criminal court, proctors who requested the fourth, or last licit delay, swore an oath that their

8 ADV B 3334 fol. 136v, 10 March 1487 (de Casanova c. Brini).

9 Beyond this point, libels could no longer be modified; see Lefebvre-Teillard, *Les officialités*, 47.

10 Fournier, *Les officialités*, 171; Lefebvre-Teillard, *Les officialités*, 52.

11 For an example of a proctor doing so, see ADV B 3333 fol. 20v, 10 March 1486 (de Gigondas c. Nobleti).

12 For an example of a returning litigant swearing this oath, see: ADV B 3333 fol. 114r, 15 January 1487 (Marcellini c. de Verona). See also, Brundage, *Canon Law*, 131; Fournier, *Les officialités*, 174–76. Academic canonists required that the oath be taken in civil suits after the issue was joined; see Donahue, "*Introduction*," 44.

13 If after a year, the defendant did not appear the judge could make a ruling and excommunicate him or her. Tancred, *Ordo iudicarius* 2.3.1, in *Pilius, Tancredus, Gratia: Libri de iudiorum ordine*: 132–39. See discussion in Brundage, *Canon Law*, 130.

14 Lefebvre-Teillard, *Les officialités*, 51.

intent was not "malicious" and that the request was necessary and not meant to stall the case or harass their opponents.[15]

In cases addressing unpaid debts, the plaintiff, or his or her proctor, often also presented a "letter of monition" at the first audience, a document whose contents are not clear, but likely contained a description of the debt owed. Letters of monition may have served as a form of summons: defendants often produced these letters without any additional letters indicating a citation. They were drafted in the name of the curia by one of the court's notaries. Plaintiffs, or their representatives, also might state aloud what was owed at the first audience. The judge could order payments of debts or the fulfillment of contracts summarily as early as the first audience, apparently, but such judicial orders did not necessarily provide a definitive end to a case (and without a definitive sentence, a case could be reopened easily and without an appeal).

As the case proceeded, the burden of proof rested with the plaintiffs, who used arguments, documents, oaths, and witnesses to support their causes.[16] Defendants simply needed to assert that the plaintiff's claims lacked sufficient legal foundations or proof, but were not required to provide positive proof, though in practice they could.[17] In a few cases, when the plaintiff failed to provide legitimate proof, the defendant won based on his oath alone.[18] The standard of proof for a formal sentence on an oral contract was high in Roman-canon law courts: to meet it, one needed to provide two reliable witnesses who had seen and heard the agreement. The witnesses most commonly called upon, though, were the men who the recorded debts, contracts, and testaments: the ubiquitous notaries of the region.

To summon witnesses, litigants first provided to the judge a list of names and set of questions. Just as in the criminal proceedings, any element of the depositions rarely can be found in the *processus* because witnesses typically were questioned in private where the judge could interject with questions, and recorded by the notary in a separate written instrument. Then, in court, this instrument was provided or the witnesses appeared with the litigant in court. Occasionally, the judge commissioned a local notary to record the testimony of witnesses who lived in remote areas. Proctors routinely asked for exceptions to disqualify witnesses, but the judge agreed to do so in only one instance. The reasons for the objection, like the others, was not specified in the record,

15 For example, see: ADV B 3333 fol. 128r, 13 February 1487 (Fabi c. Ricard).

16 Fournier, *Les officialités*, 176.

17 Brundage, *Canon Law*, 131.

18 ADV B 3333 fol. 126r, 9 February 1487 (de Valhaco c. Boni).

though in one case a proctor rejected a witness who was noted as a servant or dependent ("*familiar*") of the plaintiff.[19]

One hundred forty-eight witnesses were summoned, solicited, or compelled by the judge in fifty-nine of the cases (a paltry fourteen percent of the 433 cases). The numbers of named witnesses ranged from one (usually a notary validating a document) to sixteen.[20] The notary almost always recorded the names of witnesses; he usually noted if they held clerical or noble status, but recorded professions and residency erratically. Clergy made up a slight majority of the witnesses (seventy-four) – predominantly notaries and priests – closely followed by laypeople (seventy).[21]

The judge also could commission expert witnesses to appear before the court according to a decretal of 1187.[22] The decretal counseled that experts should add up to an uneven number, but in practice – here and in northern France according to Lefebvre-Teillard – the judge almost always commissioned two, presumably to fulfill the two-witness requirement. She found that doctors and surgeons commonly acted as experts, investigating wounds, leprosy, and impotence claims, and then remitted their conclusions in writing under oath. In the calculus of proof, an expert counted as one witness, though Lefebvre-Teillard concludes that judges tended to allot more weight to an individual expert witness and, in most instances, relied on his conclusions, "pure and simple."[23]

At Carpentras, the judge rarely commissioned expert or specialist witnesses, and he typically chose them in pairs. This excludes the routine usage of notaries who were called upon to validate contracts they made, though the court's own notary generally viewed notarial instruments and signs in court and the proctors or judge immediately recognized them as valid. Experts appear to

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19 ADV B 3333 fol. 57r, 24 July 1486 (Nobleti c. Malossi).

20 Innocent III capped the number of witnesses to forty, in order that litigants could not extend the proceedings further (X 2.20.37 *Cum causum*). See Brundage, *Canon Law*, 132.

21 In only one case is there the possibility that Jews appeared as witnesses for Christians: four Jews appeared in an inheritance dispute initiated by a man named Jacob Avigdor in his name and that of his co-heir, Josse Vitali. Avigdor was an enduring patronymic amongst the Jews of the region and a Jewish Ysaac Avidgor appears elsewhere in the records. The heir may have been a convert or the notary failed to record his religious status (he is consistent about this generally, though). One of witnesses, Magister Bonastruc Vives, was a creditor and frequent plaintiff in court (as will be indicated below in the section on debt litigation). ADV B 3333 fol. 10v, 16 February 1486 (Avidgor Heirs c. Brueys).

22 Fournier, *Les officialités*, 199.

23 Lefebvre-Teillard, *Les officialités*, 57. Marriage nullifications for impotence, though, did require a doctor, surgeon and matron.

have been used in property and inheritance disputes to ascertain the nature of properties under contention (location, extent, and/or value).[24]

Litigants, too, could request that the judge appoint specific experts to achieve a speedy compromise. When the notary Magister Laurens Chuppini, who represented his father, Johan, appeared to obtain his share of an inheritance, he suggested that a knowledgeable person assess its distribution and subsequently that he receive half or some other valid amount. Part of the inheritance was earmarked for works on the cathedral church. He suggested a notary from Carpentras frequently mentioned in the records.[25] On 3 April 1486, a few weeks after the request, the official, the acting judge, commissioned the priest Dominus Guilhem Vernarelli (the criminal court's sitting judge, who was attached to the cathedral in question) and the noble merchant Johan de Greynhano (a prominent resident and creditor at Carpentras) to help resolve the matter outside of his camera.[26] On 14 April, based upon the advice of the deputized men, the official ruled that the heirs – really the priests representing the Church of Carpentras – should restore to Laurens certain movable goods that they had seized. Then, just as Laurens had suggested, the money (10 florins) was divided in court. Finally, Laurens swore not to return to court in pursuit of any more legal actions on the matter. The commissioning of men considered experts in a sense facilitated a process resembling an arbitration. In some instances, witnessing by other professionals morphed comfortably into formal arbitrations, which may have resulted in faster, less costly resolutions.

For example, in January 1486, Stephan Lambert, a carpenter from Carpentras, turned to this method during his suit against a priest, Dominus Johan Pathe. Stephan demanded 23 florins from Johan, the remaining debt owed for his work on the latter's house. Repeated delays, responses, witnessing, and arguments over expenses consumed most of the next six months. At the end of June, the litigants agreed to a temporary pause, but failed to achieve a concord. On 25 July, the litigants selected two of the former witnesses (plasterers or *gypserios*) to act as arbitrators. As this was a formal arbitration, parties were bound to rules that would ensure a resolution. The judge set a terminus for mid-August, with a penalty of 10 florins to be split evenly between them should they

24 See for example: ADV B 3333 fol. 225r, 10 October 1487 (Bareti c. Chantecler). Primarily notaries were engaged for this, but prominent noblemen aided, too.

25 ADV B 3333 fol. 21r, 11 March 1486 (Chuppini c. Bertet).

26 ADV B 3333 fol. 24r, 3 April 1486 (Chuppini c. Bertet). The proctor fiscal produced the record for the commission in court, noting that the case "*litigari non debeat*" in camera and that the two commissioned men "*cognoscant*" what bequest is owed and should be given.

fail to cooperate and conform to the decision reached. Well within schedule, on 11 August, the litigants appeared at the bishop's curia to record an "arbitrated sentence." The arbitrators, as the "the composers of the peace," summarized their method *in camera* (again illustrating an important recording role for the court). They "saw" the first obligation and pact made between the parties (the contract). They heard and considered the court documents (libels, defenses, testimony, and the notary's *processus*) which were read to them in the vernacular. They noted that Stephan and the priest also made an oral agreement that the former would indeed pay for his labor and costs. Finally, they concluded that the priest should pay 5 florins and 6 grossi to Stephen the carpenter within about ten days, which was the standard payment period in this court. Through this mediation, there was to be peace, the *processus* declared. The compromise was immediately "lauded and ratified," reinforcing the impression that the court favored such resolutions. As with any agreement, witnesses were noted in the record. No further problems were recorded.[27]

Arbitration, then, could be seamlessly integrated into legal suits and served to resolve cases. In a variety of cases, the judge delegated others to weigh disputes, a process which acted as a form of peacemaking and ensured the resolution of the case. Ecclesiastical judges were to encourage peace negotiations and arbitration helped ensure that. It grew from, and shared elements of, a long tradition of effective, if sometimes temporary, peacemaking. As Stephen White comments on 11th-century France: arbitration had a better prospect of assuring a more lasting settlement, as the parties could air a wide range of grievances and were not limited to a specific legal issue.[28] Roman-canon law courts added procedural formalities, solemnities, and different form of legitimacy to achieve that goal. Arbitration enjoyed popularity – and could be preferred over court actions – due to its procedural simplicity and flexibility, its increased speed and decreased cost, and potential for conclusiveness. The most immediate or the most complex problems could be targeted and resolved directly. Just as Carole Rawcliffe, for example, noted in the arbitration of commercial disputes of late medieval England, arbitrators could be chosen from qualified specialists who could be instructed to function within very precise terms and perimeters.[29] It may have helped conflicts from escalating and avoided the

27 ADV B 3333 fols. 58v, 25 July 1486 and 65r, 11 August 1486 (Lambert c. Pathe).

28 Stephen White, "'*Pactum . . . Legem Vincit et Amor Judicium*': the Settlement of Disputes by Compromise in Eleventh-Century Western France," *American Journal of Legal History* xxii (1978): 281–302.

29 Carole Rawcliffe, "'That Kindliness Should Be Cherished More, and Discord Driven Out': Settlement of Commercial Disputes by Arbitration in Later Medieval England," *Enterprise*

continuing nuisance, costs, and publicity of court proceedings. Additionally, two sets of authorities reinforced its legitimacy: that of the carefully selected arbiters, who often were important local figures and sometimes experts in an appropriate field, and the court, which managed and ratified the concord.

Litigants engaged in formal arbitration in six cases, one of which was reinforced by a definitive sentence by the judge.[30] Arbitrated cases were as diverse in nature and participants as was the civil forum itself, though often they had been prolonged lawsuits and involved complex evidentiary disputes. Arbitration settled conflicts over debts, payments, and inheritances among litigants from various socio-economic groups, from skilled laborers to an archdeacon and doctor of law (and frequent litigant in the court). Most were over property, inheritances, and services, but occasionally technical issues prohibiting resolutions. For instance, one minor had to reassert that his uncle (a proctor of the court) was legally entitled to act as his agent before arbitration could begin.[31] Informal peacemaking may have been more common, as will be discussed in the section on debt litigation below and in the next chapter, and in only one instance did litigants appear to request arbitration after a (failed) attempt at an out-of-court negotiation.

To begin the procedure at Carpentras, both parties appeared in court to request arbitration be initiated and two arbitrators commissioned. Each side seemed free to choose its own arbitrator or consent to the arbitrator suggested by his or her opponent. Like the litigants, arbitrators ranged in status: they included two skilled laborers (plasterers), two prominent noblemen (one of whom was a merchant and frequent litigant), a judge-major, the rector of the Comtat, and Dominus Rodolf Bonifaci (abbé de Saint-Sauveur, a former rector and the current rector's *comitatus* and lieutenant).[32] All appeared to be knowledgeable in the cases or the legal system as one might expect based on other studies of arbitration.

Litigants then immediately submitted themselves to arbitration in a stage called a *compromissio*. This compromise committed them to abide by the

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and Individuals in Fifteenth-Century England, (ed.) Jennifer Kermode (Stroud: Alan Sutton, 1991), 100–102.

30 ADV B 3333 fols. 135r, 8 March 1487 (de Pomelerio c. Ansignieti); 137r, 10 March 1486 [see also the continuation at 140r, 16 March 1487] (de Casanova c. Brini); 58v, 5 July 1486 and 65r, 11 August 1486 (Lambert c. Pathe); 76r, 5 September 1486 (Nobleti c. Malosse).

31 ADV B 3333 fol. 137r, 10 March 1487 (De Casanova c. Brini); 116v, 17 January 1487 (Nobleti c. de Valaguerno et al.); 11r, 17 February 1486 (Tarditi c. Tarditi).

32 For Rodolf Bonifaci's role as lieutenant, see: Fornery, *Comtat-Venaissin*, 495.

decisions or awards (*arbitrium* or *arbitrates*). In some cases, the record hints at the issues considered. The judge assigned a term for the completion of the arbitration and the financial penalty to be split by both parties if they ignored or violated the terms of the arbitration (the notary recorded the financial terms in three of the cases as 10 livres, 10 florins, and 10 gold pieces). In most instances, this money would go to the court, but in one arrangement the money was allotted for the construction on the church of Carpentras, probably because this was one of the possible recipients for the money in dispute. Once the notary ratified the agreements to arbitrate and recorded the names of those witnessing this commitment in court, the judge temporarily suspended the case. Arbitration was conducted out of court and at the discretion of the arbitrators: the *arbitratores* conducted an *arbitratus* to establish equitable compromises.

The notary recorded part of proceedings conducted outside the bishop's curia in two disputes arbitrated by the rector (with the judge-major or his lieutenant) outside the bishop's court. In these instances, the arbitration was handled much like a normal case, but adjudicated in front of the rector, and at least initially, in the great hall of his house (and not referred formally to his own court forum, thereby preserving the competency of this court, too). It is possible that these, in fact, operated like an *arbitrium*. Once arbitration was completed, the parties returned to court to register the arbitrators' decisions or awards: the court provided a witnessed record, reinforcing it with solemnity, an institutional legitimacy, and the threat of future judicial censures if the agreement was ignored or broken. As Edward Powell stressed for the common and canon law courts of England, lawsuits and arbitration "went hand-in-hand," complementing one another, like war and diplomacy: litigants appreciated the tactical possibilities of their coordinated usage.[33]

But most cases were not arbitrated and several audiences might be held to resolve the case. After the litigants and their proctors presented their testimony, the judge "published" it and scheduled an audience to allow proctors to read the responses and construct arguments, called *positiones* in the records. These arguments, the details of which the notary only rarely recorded, were meant to draw attention to contradictions, flaws, or errors in the depositions. Litigants sometimes presented arguments of law that drew attention to canons supporting their claims, called *allegationes*. These would have been composed by the litigant's advocates, though that leaves no other trace in the records. Here, too, the notary did not record the details of the objections

33 Edward Powell, "Arbitration and the Law in England in the Late Middle Ages: The Alexander Prize Essay," *Transactions of the Royal Historical Society*, Fifth Series 33 (1983): 57.

presented in these allegations often, but rather simply noted that the proctor presented "a pertinent point of law."[34] Perhaps there were loose copies from which they worked, but again, no records of their details remain. We can conjecture that litigants employed advocates for such tasks not only because they had the necessary expertise, but because we have evidence of advocates suing their clients for payments for legal services rendered here.[35] Once the proof was addressed, the judge could deliver a court order or a ruling.

4.3 Debt Litigation

Procedure and the nature of justice in civil cases is best illustrated through a discussion of the most common type of case, debt litigation, rather than a sampling of unique cases.[36] Elements of the process were similar to those in criminal cases, though the outcomes were more varied. As Julie Claustre notes, a judicial action in favor of the creditor had two potential effects: the sanction of the defaulting party and the registration of a debt, validated by the jurisdiction of the given court.[37] The power of courts to authenticate and recognize documents – and the desire of plaintiffs to use that to their advantage – granted courts power over the bodies and goods of litigants. Debt litigation, particularly over interpersonal loans, often dominated a court's quotidian affairs as it did at Carpentras.[38] During the course of their lives, most medieval Europeans were indebted to others in loans which could cross social

34 ADV B 3333 fol. 27v, 7 April 1486 (Nobleti c. de Valguerno et al.).

35 ADV B 3333 fol. 213v, 24 September 1487 (Romei c. Riperti, also Baqui). Dominus Jacme Romei, *bacalarius*, sued for his "*patrocinium*" or legal expenses. Notaries, too, sued the losing party for labor, as in ADV B 3333 fol. 101v, 24 November 1486 (Patris c. Arnaud).

36 The discussion on debt litigation draws upon research used, and described both more broadly and in more detail in: Elizabeth L. Hardman, "Regulating Interpersonal Debt in the Bishop's Court of Carpentras: Litigation, Litigators and the Court, 1486 and 1487," *Journal of Medieval History* 40:4 (2014): 478–98.

37 Julie Claustre, "Introduction," *La dette et le juge: juridiction gracieuse et juridiciton contentieuse du XIII^e and XV^e siècle* (*France, Italie, Espagne, Angleterre, Empire*) *sous la direction de Julie Claustre, Ouvrage publié avec le concours du Conseil scientifique de l'université Paris I* (Paris: Publications de la Sorbonne, 2006), 10–12.

38 The term "interpersonal loan" distinguishes these suits from debts arising from unfulfilled contracts, as well as contested or unpaid services, rents, legal fees, taxes, or tithes, all of which continued to be heard in here as in other church courts, but in smaller numbers.

and religious divides, and borrowing was crucial to the medieval economy.[39] While credit could be vertical in nature and reinforce socio-economic hierarchies, debt formation could also strengthen social bonds among those sharing a close familial or professional status.[40]

In Carpentras, as he considered debt cases, the judge rarely acted in a coercive manner and exercised a mediatory role that encouraged, and often depended upon, cooperation. Contumacy was common, yet in many instances, the appearance of the debtor might not have been expected, or even desired, by creditors. Though cases were cast always as a dispute between two parties, many creditors simply came to authenticate and register debts and to pressure debtors. If the debtor failed to appear, the judge could simply order payment. This was not necessarily a firm conclusion to the case: without a definitive sentence of condemnation, the debtor could later contest the order in a courtroom without making a formal appeal (as one would if a sentence had been reached). In the end, the judge's coercive tools were limited and rather sparingly applied, as in the criminal sphere, and he prioritized peacemaking over punishment. The court's role in civil suits was not limited to judging whether and how defendants defaulted on contracts of various sorts: it also exercised what is often called a "non-contentious" jurisdiction, which involved the management, creation, and/or authentication of documents created by the court and public notaries.[41] As we have seen, and will see again, the litigation involved conflict and compromise, and relationships made, broken, and ideally renewed. If lawsuits suggest the contours of credit exchange and possibly

39 For southern France, see Kathryn Reyerson, *Business, Banking and Finance in Medieval Montpellier* (Toronto: Pontifical Institute of Mediaeval Studies, 1985), 73–4, 128; Joseph Shatzmiller, *Shylock Reconsidered: Jews, Moneylending and Medieval Society* (Berkeley: University of California Press, 1990), 72–9; Louis Stouff, "Activités et professions dans une communauté juive de Provence au bas moyen âge. La juiverie d'Arles, 1400–1450," in *Minorités, techniques et métiers: actes de la table ronde groupement d'interêt scientifique sciences humaines sur l'aire méditerranéenne, Abbaye de Sénanque, Octobre 1978* (Aix-en-Provence: Institut de recherches méditerranéennes, Université de Provence, 1980), 56–77. For France, see summary in Claustre, "Introduction," in *La dette et le juge*, 8. For England, see Richard H. Britnell, *Growth and Decline in Colchester, 1300–1525* (Cambridge: Cambridge University Press, 1986); Maryanne Kowaleski, *Local Markets and Regional Trade in Medieval Exeter* (Cambridge: Cambridge University Press, 1995), 349.

40 Claude Gauvard, "Conclusion," in *La dette et le juge*, 189. She qualifies this by noting that the poorest lacked the wealth and connections to secure credit.

41 For a broader general discussion of legal instruments and documentary proof (and the roles of legal institutions and notaries in their development), see van Caenegan, *Legal History*, 106–110.

social networks, litigation reflects a rupture in them and, as will be demonstrated, the court worked to avoid enmity by acting not only as a recording and punitive agent, but one that encouraged private negotiations.

In the civil litigation, the most common, and often most detailed, cases were suits over interpersonal debts: two hundred and forty cases concern debt litigation (about 74 percent of the identifiable caseload).[42] Loans were framed as "obligations," sworn oaths or promises underwritten by the soul. Debt litigation followed the civil accusatory procedures of canon law in which aggrieved parties promoted cases in their names, typically aided by proctors. As in the criminal forum, all litigants were subject to the ecclesiastical penalty of excommunication. Judicial action in favor of the creditor led to an order against the debtor but also the authentication and registration of the debt – both attributes that could make lawsuits attractive and courts powerful. The losing party paid court fees. All laypeople could pursue debt litigation in this court, and, by reason of their unique religious status, clerics and Jews could demand their disputes be adjudicated here.

On a near daily basis, this court maintained a remarkably robust role in managing debt disputes, adjudicating cases among a wide diversity of litigants who resided throughout the diocese (clergy and laypeople, Christians and Jews, men and women, both elite and not). Typically their quarrels involved loans of moderate sums exchanged within horizontal lending arrangements (that is, between social equals).[43] Though the amounts were not always specified, most

42 This study considered all actions initiated to recover debt, including ones in which creditors presented libels (complaints with a demand for legal redress) but may have sought only to obtain a judicial order for repayment, rather than to confront the debtor before the judge. Church courts heard such debt suits frequently, though in northern Europe marital disputes were more common and legal consumers increasingly preferred secular courts for debt litigation, and in particular, for disputes over written contracts. For the general differences in litigation in the northern versus southern regions of France, see Lefebvre-Teillard, *Les officialités*, 87, 116, 222.

43 Here, as in Provence and Italy, *grossi* and florins were the main currencies: a florin held at a value of 12 *grossi*. Loans often were given in *grossi*. Some debt payments were demanded in "current money," the papal or "cameral" florins (which resembled the Florentine florin in appearance); presumably, in a papal state these would be available and have well-known values. Florins often were used as money of account and therefore of fixed value, as opposed to an actual coin, whose value fluctuated based upon the quality and date of issue (or coin-clipping). For a discussion of currencies, see Henri Rolland, *Monnaies des comtes de Provence XII^e–XV^e siècles: histoire monétaire, économique et corporative, description raisonée* (Paris: A.J. Picard, 1956), 81–3 and 188–90, and for papal currencies in particular, see Peter Spufford, *The Handbook of Medieval Exchange*. Royal Historical Society Guides and Handbooks 13 (London: Royal Historical Society, 1986), 121–8. The real

were under 5 florins. The loans ranged in value, but the courts' services clearly were attractive enough to ensure that local creditors continued to use them.

At a glance, this forum's vitality and its litigants' diversity are surprising. Historians have assumed, often fairly, that church courts lost ground to secular courts, which freely deployed a wider range of penalties, made rulings that may have carried more weight, and provided mandaments (legal devices recognizing debts and ordering repayment) that were accepted in a wider variety of jurisdictions as full proof (particularly royal jurisdictions).[44] In general, as the secular state grew, secular courts exercised a more coercive and punitive role over debt regulation, which in addition to fulfilling the goal of secular authorities to attain new sources of revenue, thereby asserted their control over persons and goods.[45] Secular courts slowly, but increasingly, stripped defendants of their rights, applied harsher punishments, and ruled expeditiously and summarily, all innovations the church courts adopted more slowly.[46] Historians speculate that these qualities enhanced the popularity and power of secular

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worth and fluctuations of coinage in the last decades of the 15th century Comtat remains to be studied. Addressing the problem of the wide fluctuations of prices and wages in Renaissance Florence, Richard A. Goldthwaite argues that the power of a florin to buy unskilled labor is a good benchmark for its value and better than a cost-of-living index. See: *The Economy of Renaissance Florence* (Baltimore, MD: Johns Hopkins University Press, 2009), 612. We can use this approach, roughly, by looking at civil litigation over unpaid labor in the records studied here. The widow Hugueta won 9 florins for 15 months of child care. See: ADV B 3333, fol. 45r, 6 February 1486 (Hugueta, Widow of Mauheri c. Pellisseri). A variety of unskilled laborers, grinders, and carters typically sued for 9 to 15 *grossi* for short-term labor. See, for example, ADV B 3333, fol. 192r, 8 August 1487 (Bareti c. Chantecler); fol. 242r, 9 November 1487 (Pascal c. David); fol. 175r, 22 June 1487 (Perreti c. Bertran). Construction projects cost much more, but it is hard to distinguish between the costs of labor and materials.

44 Debt litigation in church courts generally declines in northern Europe by the 15th century. See the following: Brucker, "Ecclesiastical Courts," 257; Julie Claustre, "Introduction," in *La dette et le* juge, 8; Lefebvre-Teillard, *Les officialités*, 116; Richard H. Helmholz, "Debt Claims and Probate Jurisdiction in Historical Perspective," *American Journal of Legal History* 23 (1975): 76–80; Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (New York: Saint Martins, 1998), 203–204; R. Brian Outhwaite, *The Rise and Fall of English Ecclesiastical Courts*, 1500–1879 (Cambridge: Cambridge University Press, 2007), 15–32; Woodcock, *Medieval Ecclesiastical Courts*, 89–92; Wunderli, *London Church Courts*, 18–23, 105–107.

45 See particularly, Kouky Fianu, "Enregistrer la dette: le témoignage des sources de la justice gracieuse à Orléans (XIII^{e}–XV^{e} siècle)," in *La dette et le juge*, 138–39. For example, in Orléans, registered acts could be treated only as a half proof.

46 Brundage, *Medieval Canon Law*, 140.

legal authorities in the eyes of creditors and made the courts more "effective." But this assumption is predicated on our limited expectations of what courts did and ought to do, and what good justice and governance entailed, factors at the heart of this study. Furthermore, regional variations complicate the narrative, as do the records, which vary widely in nature and scope.

If we look beyond England and northern France, upon which most scholarship focuses, the story can differ. Lefebvre-Teillard finds that in contrast to the north, contract and debt litigation was of "considerable volume" in the church courts of the Midi into the 16th century.[47] For Besançon, the capital of Franche-Comte, Lucien Febvre illustrates that debt litigation was not merely the most prominent litigation in the church court of the archdiocese, but was also its biggest generator of income in the 16th century.[48] Gene A. Brucker, too, concludes that the "preponderant majority" of cases in 15th-century diocesan courts in Tuscany were over finances, and over ninety percent of cases described in notarial protocols concerned debt.[49] Church courts appear to have been favored for oral contracts and retained a prominent role adjudicating disputes over written contracts, particularly wherever royal notaries were unavailable. Certainly, the high volume of debt litigation and wide diversity of creditors and debtors reflects trends found in *secular* courts in England and France and *ecclesiastical* ones in Italy (again suggesting a regional pattern, as speculated for the criminal forum).[50] The diversity of the participants reflects lending trends typical of Provence, too, suggesting that the court was well-embedded in the local credit network.[51]

Several factors may have led creditors to choose to use this court. Church courts catered to a wide variety of debt disputes, given the competency they claimed over oaths, and most of the litigation involved oral contracts, which lenders knew could be pursued most easily in ecclesiastical courts. This court, in particular, also was a good venue in which to validate written contracts drafted and sealed by the public notaries, who were members of the lower clergy and licensed and disciplined by the bishop of Carpentras. If cases

47 Lefebvre-Teillard, *Les officialités*, 116.

48 Lucien Febvre, "L'application du Concile de Trente et l'excommunication pour dettes en Franche Comte," *Revue Historique* 104 (1910): 1–39.

49 Brucker, "Ecclesiastical Courts," 250.

50 Britnell, *Growth and Decline*, 103; Reyerson, *Business, Banking and Finance*, 73–74; Shatzmiller, *Shylock Reconsidered*, 72–79; and Claustre, "Introduction," 189.

51 Analyzing litigation patterns sheds light on lending, as large scale studies of debt indicate that litigation was representative of local credit networks. See Maryanne Kowaleski, *Local Markets and Regional Trade*, 349.

involved neither clergy nor Jews, both of whom held a special privilege to this court, creditors could choose a secular court based largely on their residence.[52] The secular court system included the civic courts, the three juridical districts into which the Comtat was divided, and the supreme court of the rector who governed the Comtat (available at his discretion for cases involving public finances or broader political issues).[53] But once creditors choose a venue, the court expected adherence to its rules and the acceptance of its sanctions.

Breaking down the numbers as best as possible, Christian laymen predominated as identifiable plaintiffs, including a significant number of men who held mercantile positions and/or were labeled "*nobilis*." Thirty-five percent of the plaintiffs had a lay social identifier, usually professional. They include a small percentage of women, whose marital or familial status is typically included: though the records are not always explicit on this, they appeared to collect both debts owed to them directly and as heirs. Laborers and servants also initiated a small percentage of cases. Those with identifiable clerical titles make a strong showing, comprising 26 percent of the plaintiffs; though the notaries did not note social and professional identities universally, they recorded clerical identity fastidiously, as this status affected procedure and discipline (and clerics who appear multiple times in the two sets of records were consistently labeled as clerics). Jews were prominent at 14 percent (just a bit above their relative demographic weight). The majority of the plaintiffs resided in Carpentras (77 percent) and the major towns and closest villages. Among the defendants, the largest identifiable group consisted of male laypeople (22 percent), as with the plaintiffs, and even more often unidentified males (59 percent). Unlike the creditors, the typical debtor appears to have been a laborer or artisan. Artisans and victuallers were prominent as debtors, half of whom were masters of their trade, sometimes borrowing specifically for their businesses. Women appear as defendants more often than plaintiffs. Clergy and social elites like nobles and merchants appeared less often as debtors. Jews rarely were sued. Unlike the creditors, debtors hailed from more varied locales, and more resided in small villages. These numbers suggest an inclusivity of the litigants and reflect trends common to dioceses that were smaller and further from royal notaries and legal jurisdictions. In over half the cases clerics or Jews were involved, while the remaining cases pitted laypeople against one another.

52 Dubled affirms that Jews retained this contested right in the 1480's: see *Comtat Venaissin*, 57; David, *L'organisation administrative*, 148–57.

53 David, *L'organisation administrative*, 65–68, 192–95, 235–36, 352–64; Dubled, *L'histoire du Comtat Venaissin*, 63–64, 73.

At Carpentras, these lawsuits over debts arose between lay people, or between the laity and clergy, suggesting that the two groups were economically interdependent. As Brucker found for 15th-century Italy – in contrast with northern Europe – the church court heard cases not only between lay and clergy but also many among a variety of laypeople.[54] At Carpentras, there is an almost total lack of litigation between clerics and Jews, between nobles and clerics, and among nobles.[55] The typical exchange was between people lacking elevated status (a conclusion which suggests similarities to English courts).[56] Horizontal lending between those of similar (or no recorded) status predominated, except in cases involving what appear to be professional lenders, most of whom were merchants, upper clergy, or Jews.[57] Given the growing local anti-Jewish hostility, often led by priests, clerics may have rarely taken loans form Jews. While studies of credit in southern France conclude that nearly everyone was indebted to Jewish creditors, in some regions clergy similarly avoided borrowing from Jews.[58]

Jews, nevertheless, were among the most prominent lenders, five of whom (Ysac Avigdor, Jacob Bonet, Cresques Bonjues, Magister Vides de Lattes, and Bonastruc Vives) each initiated three to six lawsuits a piece and demanded repayment in money, ranging from 1 to 5 florins or, less commonly, in future

54 Brucker, "Ecclesiastical Courts," 249–50.

55 Lay elites may have relied on self-help and kept their quarrels internal to their group.

56 Horizontal lending between those of noble status or mercantile professions was rare perhaps because they resorted to self-help. William Chester Jordan and Roderigue Lavoie, in their studies of Europe and Provence respectively, illustrate that a vertical, unequal lending structure divided rich and poor, while English historians Elaine Clark and Britnell identify primarily horizontal relationships – informal ones based upon mutual respect or kinship. See: William Chester Jordan, *Women and Credit in Pre-Industrial and Developing Societies* (Philadelphia: University of Pennsylvania Press, 1993), 27; Lavoie, "Endettement et pauvreté en Provence d'après les listes de la justice comtale, XIV^{e} and XV^{e} siècles," *Provence Historique* 23 (1973): 214–15; Elaine Clark, "Debt Litigation in a Late Medieval English Ville," in *Pathways to Medieval Peasants*, (ed.) J.A. Raftis (Toronto: Pontifical Institute of Mediaeval Studies, 1981), 27; Britnell, *Growth and Decline*, 103.

57 Those who initiated three or more debt cases and presented mandaments frequently, often several per day, were isolated as potential professional lenders.

58 Richard R. Emery, *The Jews of Perpignan in the Thirteenth Century: An Economic Study Based on Notarial Records* (New York: Columbia University Press, 1959), 39–66. Shatzmiller found that Jewish creditors rarely lent to nobility or clergy; see *Shylock Reconsidered*, 74–76. Monique Wernham concludes that loans extended by Jews to nobles and clergy accounted for 26 and 21 percent, respectively, from 1391–1405; see *La communauté juive de Salon-de-Provence d'après les actes notoriés, 1391–1435* (Toronto: Pontifical Institute of Medieaval Studies, 1987), 149–50.

crops. Jewish creditors lived in the larger towns of the diocese, particularly the capital, but their clientele predominantly resided in rural areas, scattered widely throughout and outside of the diocese. Jews likely favored this court, where they were treated like other litigants (even suffering a form of excommunication in the criminal forum, as will be seen in Chapter Five). Jewish lenders may have avoided towns, where Jews faced increasing restrictions and attacks, or were filling a lending niche. This large geographical zone of lending for Jewish creditors – rather than a locally-concentrated sphere – contrasts with findings for 14th and early 15th-century Provencal locations.[59] The shift to rural lending resembles the 13th-century strategy of Jews in England following negative shifts in laws and attitudes found by Robin R. Mundill, and is certainly understandable given the growing hostilities in the diocese's towns.[60] While Jewish lending created resentment, its absence could indicate that the Jews had become more isolated and, in a sense, less useful to their Christian neighbors.

And it is the usefulness of church courts which historians often question when it comes to debt regulation. We are inclined to evaluate a court (and, in particular, its efficacy) by its ability to resolve cases definitively and act punitively. Undergirding this approach is the notion that courts should wield their extensive power to judge the litigants and their rights and to exert control over insolvent persons and their goods. The courts appear to have evolved to fit that role, but as will be discussed more below and in the following chapter, they did so slowly and that shift varied widely in practice, in both the civil and criminal spheres. Generally, before the later Middle Ages, civil justice largely conformed to a cooperative and voluntarist model: debt litigation was a negotiated process in which creditor and debtor worked together to resolve the conflict with the aid of a judge. The court facilitated, legitimated, and mediated settlements and depended on litigants to initiate cases and secure conclusions. By the later medieval period, innovations in Roman law created new tools of enforcement and punishment and allowed judges to rule summarily, either in a punitive or merciful manner. These innovations proved attractive to creditors. Simply, it appeared, a repressive, punitive court system slowly supplanted an earlier

59 Christian Castellani, "Le rôle économique de la communauté juive de Carpentras au début du XV^{e} siècle," *Annales: économies, sociétés, civilisations* 27:3 (1972): 608; Noël Coulet, *Aix-en-Provence: Espace et relations d'une capital* (*milieu XIV^{e} siècle–milieu XV^{e} siècle*) (Aix-en-Provence, 1988), 146–50; and Wernham, *La communauté juive*, 148.

60 Robin R. Mundill, "Christian and Jewish Lending Patterns and Financial Dealings during the Twelfth and Thirteenth Centuries," in *Credit and Debit in Medieval England c. 1180–c. 1350*, (eds.) P.R. Scofield and N.J. Mayhew (Oxford: Oxbow Books, 2002), 57.

one which stressed cooperation, whether by preference or necessity (i.e. due to the constraints of the legal system and its high standards of proof). But more recently, historians have stressed that courts continued the daily business of simply recognizing, authenticating, and legitimizing debts for creditors, as well as providing legal instruments to aid in their collection. As Julie Claustre asserts, these functions of the court (one that judged contentious litigants, one that cooperatively settled disputes, and one that registered debts) coexisted in one coherent system for credit exchange and collection.[61] These roles were complementary. One might note, also, that it is hardly necessary to assume that one system was entirely useless or unattractive simply because another system prevailed over time.

At Carpentras, the judge took a *primarily* voluntarist approach, acting as registrar and mediator, and eschewed arbitrary rulings, as long as the defendant appeared. The judge conservatively exercised his power, respecting long-held procedural and jurisdictional limits and avoiding summary judgment or even definitive or punitive rulings. He threatened excommunication and fines for noncompliance but rarely applied the more draconian measures of fines, seizures, or incarceration. Cases could end with a ruling or simply a judicial order that defendants make restitution by a specified time, as was common in 14th-century Provencal secular courts.[62] In ecclesiastical courts like this, excommunication could be ordered in conjunction with rulings, as was done here universally.[63] The judge also could order the insolvent debtor's goods seized by the Comtat's sergeants (who served all its courts, with notaries acting as intermediaries), but ordered this only once.[64] When defendants failed to appear, the judge often ruled summarily, simply ordering a letter composed indicating that the debtor should pay when able, often noted in the notarial short-hand as "*litteras opportunas*." When defendants confessed, the judge ordered them to pay (usually within 10–15 days, but that day if they agreed) and threatened excommunication if payment was not made.

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61 Claustre outlines these models and the most relevant bibliography; see "Introduction", 7–16.

62 Shatzmiller, *Shylock Reconsidered*, 10–11; Smail, *Consumption of Justice*, 146–47.

63 This practice may have been common, as suggested by formulary letters for Marseille and Aix, see: Aubenas, (ed.), *Recueil des lettres des officialités*, vol. 1, nos. 78–79, 87–89, 103–104 and vol. 11, nos. 2, 38–34, 64, 66–69, 102–104, 115, 133–34. See also Paul-Louis Malaussena, *La vie en Provence orientale aux XIV^e^ et XV^e^ siècles* (Paris: Pichon et Durand-Auzias, 1969), 229–30.

64 Girard, "Une Ordonnance du cardinal de Foix," 203.

Plaintiffs could swiftly execute the process, as did the merchant creditor, Johan de Greynhano in February 1486. Johan's proctor asked for 1 florin in debt from Anthoni Arnaud, as stipulated in the receipt he presented.[65] The defendant examined the receipt, recognized the writing and signature, confessed, and asked for time to repay. Then, the judge condemned and instructed him to pay the debt within ten days on pain of excommunication. A marginal note specified that he paid within ten days.[66] But other cases were concluded quickly without any documentation.[67] Most cases consumed only one or two audiences.

Creditors met their burden of proof with arguments, documents, oaths, and witnesses to support their cases. Defendants simply needed to demonstrate that the plaintiffs' claims had no sufficient legal proof. This unequal evidentiary rule was illustrated dramatically in those rare cases in which the defendant's oath alone won a judgment in his favor.[68] Because so many debts were made by oral contract, most cases lack evidence of their formation or payment: they simply record the amount owed and state that an oral promise (*bona fide*) was made.[69] Despite a strong notarial culture, creditors presented notarial instruments recording debt exchanges in 35 cases and receipts (*appodixa*) in 9 cases (small numbers in our total of 240 cases). Slow recourse to judicial remedy for unpaid debts was common, and not only when inheritances were involved. Litigation over older debts appears to have been common in the courts of the region: Nicole Coulet, for instance, noted that in Aix-en-Provence, several years could elapse before debt recovery began.[70] Courts like the one at Carpentras, which did not set any temporal limits on debt recovery, helped facilitate this. Most notarial instruments here were several years old; this was especially true of mandaments.[71] Judicial orders, then, did not necessarily resolve the dispute, though these mandaments compelled four defendants to begin settlement

65 ADV B 3333, fol. 14r, 25 February 1486 (de Greynhano c. Arnaud).

66 Ibid.

67 For some good examples, see: ADV B 3333, fols. 13r, 23 February 1487 (Britonis c. David); 133r, 1 March 1487 (*Clavaire* c. Verselli); 112r, 22 December 1486 (Patris c. Avigdor).

68 ADV B 3333, fol. 126r, 9 February 1487 (de Valhaco c. Boni).

69 For example, see fol. 194v, 16 August 1487 Carreteri c. ViJone).

70 Coulet, *Aix-en-Provence*, 516–18. Debts were 7 months to 2 years old; only a minority paid on time.

71 Five dated back to the mid-to-late 1470s and six to the early 1480's. For examples, see fols. 4v, 23 January 1486 (Astrug c. Latili) [1477] and 12v, 23 February 1486 (Barriani c. Francesci) [1481]. Additionally, eight mandaments were presented and a few dated back several years, the earliest to 1472.

negotiations.[72] Hand-written, un-notarized receipts, often written by the creditor, indicating partial payments could also be presented, but were not common. Witnesses appeared in only 38 cases (16 percent), both in tandem with written records and not, and the most effective and well-prepared ones were familiars of the creditor. When evidence was lacking, one or both of the parties usually swore an oath about the debt, and in such cases, plaintiffs tended to prevail slightly more often than defendants.

Debtors also could challenge the amount claimed or insist that they made partial payments. A quick admission could reduce his total expenses, as the losing party paid court fees and the judge usually accepted the revised amounts. The plaintiff could challenge it, subject his adversary to further interrogation, and swear an oath countering the debtor's. This could stall the case, as illustrated by the cause between Magister Johan Clerenci, a German residing in Carpentras, and Magister Guilhem de Asperis, a carpenter from Bedoin, which began on 23 July 1487. Johan claimed Guilhem owed him 3 florins, half of the original 6 florins he had lent him, but Guilhem insisted he paid 1 florin already. They took their oaths in late August, witnesses appeared in September, and in October both proctors requested the judge bring a definitive end to the cause.[73]

Jews, too, could use oaths to substantiate claims. One Jewish creditor, Vides de Lattes, after providing two notarial instruments and the notaries' signed testimony as documents, was interrogated and swore before the court that no payment had been made on the 50 florins owed him (he probably swore on the Hebrew Scriptures as was done in Marseilles).[74] The debtors, Jacme Charpeneli and Gregor Angeri, confessed and the judge ordered these "foreigners" who had "nothing for the consideration of the judge" to pay within ten days under threat of automatic excommunication.[75] We cannot know if the documents or oath carried the day.

The following chapter will consider how the court ruled in debt litigation (and in other civil and criminal cases) and note how difficult it was for the judge to rule when evidentiary requirements were rarely so thoroughly met. But even when the judge was in no position to rule formally with a definitive

72 ADV B 3333, fol. 156v, 11 May 1487 (Juliani c. Thomasi).

73 ADV B 3333, fols. 185v, 23 July 1487 [initiation]; 196v, 20 August 1487 [defendant's oath]; 201r, 30 August and 202r, August 1487 [plaintiff's oath]; 209v, 15 September 1487 and 218r, 24 September 1487 [witnesses]; 223r, 8 October 1487 (Clerenci c. de Asperis) [last audience].

74 Daniel L. Smail found mentions that a notary at Marseille recorded the oath of Laurens Ricau, a Jewish witness, with the note, "*sanctam legem Moysi*" (*Consumption of Justice*, 56).

75 ADV B 3333 fol. 27v, 7 April 1486 (de Lattes c. Charpenelli et Angeri).

sentence based on the high Romano-canonical standards of proof, he could pressure non-appearing debtors to address the debts or order the creation of a legal instrument that recorded the existence of the debt. These services must have held some value, given that justice was not free and litigants could accrue significant debts for legal actions.

In general, though, some litigants may have merely come to cut their losses and were ready to negotiate. After suing Peire Perussi for one florin for the instruction in law he provided for him, at the third audience Dominus Johan Langeri, *jurisperitus* and rector of the cathedral school (and judge), agreed to accept 6 grossi and all legal expenses immediately that day. The deal was brokered with the notary, who spoke on Peire's behalf.[76] Many civil cases never reached a ruling, so such an ending could be attractive. According to the fee register, the notarial costs were a mere 2 grossi for the creation of the preparation of a mandament of the debt.[77] Both knew that legal fees were an issue that might lead to further dispute.

4.4 Lawsuits to Recover Legal Expenses and Services

Legal proceedings cost the losing party, who was responsible for all the court's fees in the case, as the judge often pointed out at the conclusion of cases. This practice discouraged spurious litigation and encouraged out-of-court settlements. After he ruled (or in the penultimate audience), legal expenses were calculated and then scrutinized by the judge; copies of tabulations were given to the litigants.[78] Collecting those legal expenses could be a challenge, whether they were owed to the court's staff or outside legal professionals. While the ruling ended the case, the broader legal process could continue whenever the losing party failed to pay or launched a new case contesting the expenses; unfortunately, the grounds for their rejection were hazy at best and in some cases, the party may have been trying to delay payment.[79] Notaries conceived of these suits over expenses as "new" (*nova*) cases in their registers, and they seem to fall loosely into their own conceptual category.

76 ADV B 3333 fol. 20v, 10 March 1486 (Langeri c. Perussi).

77 ADV B 3335 (inserted) fol. 1v (Langeri c. Perussi).

78 This was standard canonical practice. Brundage, "Taxation of Costs in Medieval Canonical Courts," in *The Profession and Practice of Medieval Canon Law*, 568.

79 When a new (*nova*) cause to consider the issue of owed fees [*taxa*] – often well after the original cause ended – they were considered separate cases in the statistics for caseload, in order to draw attention to them and preserve a category the notary employed.

Fees could include costs for services by notaries, transportation of witnesses, or payments to proctors and legal specialists used to resolve the case. There are few extant fee books or studies on fees. For England, James A. Brundage notes that lawsuits averaged a routine cost of 5–10 shillings for simple causes at Ely, but adds that costs could be much greater in protracted suits and points to an example sum of £135 in a cause concerning the estate and legitimacy of a nobleman.[80]

Fortuitously, a register survives that records notarial fees for the civil cases of 1486.[81] This fee book is comprised of fifteen folio folded lengthwise, making it efficient and easy to carry or tuck inside a *processus*, where I found it in the archives. Its script is consistent with that of our notary of civil cases. For some of the entries, the notary has indicated payment by crossing out the case with a diagonal line as was customary, adding a "*solvit*" or "*fuit satisfactum*," sometimes indicating the party who paid. Each entry identifies the case (so-and-so contra so-and-so) and a list of services (typically 3–5 charges, but ranging in number from 0 to 16 charges) and the fees attached to them. Some are too worn to read. Some have nothing entered below the entry heading: this happens when cases stalled or were resolved quickly with a confession.[82] Most of the fees involved the composition or copying of documents (libels, receipts, quittances, mandaments, depositions, *cedulae*, court orders, and notes pertaining to the facts of the case), the completion and documentation of depositions, the notarizing of legal acts (commissioning of proctors and verification of notarial signs), and the tabulation of fees. These common charges usually cost 2–3 grossi. With a fee of 1 florin, copies of testaments and related documents were most costly. A few cases accrued a total of a mere 2 grossi in notarial fees, typically when a litigant enlisted a proctor only.[83] In debt litigation, the total notarial fees amounted to 1–10 grossi. Registering copies of the receipts and attaining a mandament for a debt, a common enough transaction, cost a mere 4 grossi.[84] But debts relating to inheritance disputes could be expensive, given that the testament might need to be presented, and then the total costs would include those typical with debt

80 Brundage, "Taxation of Costs," 565–66.

81 ADV B 3335 (inserted).

82 For an example of the latter, see ADV B 3335 (inserted) fol. 1v and ADV B 3333 fol. 14r, 25 February 1486 (de Cheylussio c. Teyssansar or Teyssender). Note that in his condemnation, the judge explicitly holds Teyssender, who confessed, responsible for these. This was typical of cases reaching conclusions.

83 These are quite common, for example: ADV B 3335 (inserted) fol. 4v (de Chaylhaco c. Brini).

84 ADV B 3335 (inserted) fol. 42r (de Greynhano c. Bonitati).

cases (1–10 grossi) and those of inheritances cases (1 florin or more).[85] These fees could be explicitly part of the negotiating process, as noted above in the case of a debt from Langeri's instructional services.[86] Note, though, that these are notarial fees only and do not track the costs of other legal services.

Notarial fees were easy enough to prove and calculate, but they, and other legal services, could be the subject of further legal dispute. The notary recorded few details from litigation to recover legal expenses and services. The original cases included those over debt, inheritance, and property.[87] In many of these cases, notaries and other types of legal professionals (including proctors, a *bacalarius*, a *jureconsultus* and a *viceadvocatus*) sued laypeople and widows in particular (six instances), who may have had trouble paying off the expenses in addition to the debts owed by their late husbands. Legal professionals could wait months or even years before seeking payment for expenses.[88] The problem could be especially acute when cases failed to reach a resolution, and in a few such cases, professionals apparently sued those who hired them.

A few suits by legal professionals shed some light on the type of expenses they sought to recover and why they needed to do so. Some of them sued for unspecified "legal expenses" determined previously, while others, like the academic *bacalarius* Dominus Jacme Romei, who had practiced in the curia in the past, came to court in order to have the value of older unpaid labor assessed, ratified, and paid.[89] More commonly, it was the notaries who sought payment for their labors. On 10 January 1487, the magister and notary, Bartomieu Patris, sued the priest Dominus Johan Britoni for the cost of writing letters of summons for the latter's opponent, Dominus Bertan de Ubenponte (for four grossi) and for other unspecified letters (for two grossi); he was awarded his total claim.[90] He initiated two suits to recover expenses stemming from cases that never received a sentence. The first audience for both causes occurred on the same day that a concord was announced after prolonged legal quarrels:

85 ADV B 3335 (inserted) fol. 3v and ADV B 3333 fol. 38v, 13 May 1486 (Audeberti c. Roque).

86 ADV B 3335 (inserted) fol. 1v and ADV B 3333 fol. 10 March 1486 (Langeri c. Perussi). Or see notes 76–77.

87 One case only specifies that a notary used by the winning party needed to be paid: ADV B 3333, fol. 133r, 2 March 1487 (Brini c. de Casanova).

88 For example, two causes began in final months recorded in manual (October and December 1487) which lack any record of the initial cause here, indicating that the original suit dated back to 1485 or earlier. See: ADV B 3333, fol. 224r, 8 October 1487 (de Neni c. Reperti); fol. 224v, 10 October 1487 (David c. David).

89 ADV B 3333, fol. 213v, 24 September 1487 (Romei c. Heirs of Reperti).

90 ADV B 3333, fol. 180v, 10 July 1487 and 194v, 17 August 1487 (Patris c. Britoni).

because no ruling was reached, the judge did not assign expenses to either party. Hence, the notary chose to sue both sides.[91]

The notary rarely recorded the arguments or resolutions for these cases. In one instance, a plaintiff presented his payment of fees to a notary as proof.[92] In only three causes did the notary record that the payment was ordered or pending: in one, the son of the defendant deposited four florins towards the fees (and original debt) in the second audience and the notary also recorded that his own fees had been satisfied.[93]

4.5 A Comment on the Notarial Records for the Bishop's Curia and His Temporal Legal Affairs

The job of the officiality's notaries was hardly confined to recording the spiritual court's cases and fees, and extended to a variety of notarial services for the bishop, his official, and people whose business interests or status may have led them to seek their services. In addition to the *processi*, the notaries of the bishop's curia recorded in his registers notarial acts between various individuals much like any others found in Europe.[94] These notarial books for the "*domus episcopalis*" included debt agreements, land transfers, emphyteutic leases, census agreements, labor contracts, wills, matrimonial agreements, donations, notarial appointments, the sales and purchase of goods, the payment of fees to sell meat and hides, and the collection of other monies owed to the bishop.[95] Much of what is in these registers pertains to the bishop's seigneurial lordship and ecclesiastical properties – both apparently also overseen by his official – but they also include a small number of temporal legal rulings and many contracts of various sorts.

In most instances, the notaries recorded these various witnessed acts in the episcopal palace, sometimes specifically where the officiality's audiences were

91 ADV B 3333, fol. 101v, 24 November 1486 (Patris c. Arnaud); fol. 101v, 24 November 1486 (Patris c. Heirs of de Marius); fol. 101v, 24 November 1486 (de Marius c. Arnaud).

92 ADV B 3333, fol. 219r, 24 September 1487 (de Melhano c. Barriani).

93 ADV B 3333, fol. 240v, 7 November 1487 and fol. 242v, 12 November 1487 (David c. David).

94 ADV E 556 and 558 (Raphaelis) and ADV E 564 (Albinhaci): these cover the years 1486–88, 1489–1500, and 1486–1494, respectively.

95 For an excellent introduction to that nature and range of notarial contracts, see Kathryn L. Reyerson and Debra A. Salata, *Medieval Notaries and Their Acts: The 1327–1328 Register of Jean Holanie*, (Kalamazoo, MI: Medieval Institute Publications, 2004).

held, and sometimes in the presence of the official or his *locumtenens*. This location – and certainly the presence of legal authorities – may have lent the acts both legal and greater symbolic weight. Contracts involving the official or bishop (or the latter's property) carried the additional weight of excommunication should they be broken. But many of them simply ended with the generic clause that remedies for breaking the agreement could be sought in any of the temporal or secular courts of the county (often enumerated), as was a privilege of the Comtadines.[96]

While a great deal of what was recorded involved ecclesiastical property, and therefore necessitated the involvement of the bishop's representatives, not all contracts recorded here did. For them, any notary might have sufficed, and ultimately all notaries in the Comtat were regulated by the bishop. Clergy and Jews did figure prominently in these transactions, individuals under the bishop's lordship who had the privilege of his spiritual courts.[97] For clergy and Jews, it may have become a sound habit to use the notaries who were connected with a court system in which they were likely to seek redress. But many laypeople, particularly artisans, appear, as well as a notable number of women. They may have chosen to use these notaries because they were easily accessible and conveniently located, but their actions also may have facilitated a sort of governmentality by the bishop and his involvement in regulating the local economy.

The use of a separate book was no doubt convenient to the notaries but also reflected the administrative divides within the bishop's curia and the separation between his seigneurial lordship and spiritual competency.[98] The officiality was a discrete administrative entity by this time, here as elsewhere. Civil rulings and arbitrated concords here were made under his temporal prerogative. In such instances, all of the official's titles (and his benefice) were recorded, but the notary clarified that the former was acting in his temporal (*temporalis*) role as a judge (*judex*).[99] As such, he primarily resolved disputes over the ownership, boundaries, or usage of ecclesiastical land. While clergy initiated suits in the officiality to collect census payments, any

96 ADV E 556 fol. 14r, 12 March 1490; ADV E 564 fol. 57r, 31 October 1486.

97 This included debts between Jews, as in ADV E 556 fol. 108v, 29 March 1487 (*Debitum pro Y*[*saac*] *Mosse Astruc*). The debt was between two Jews, one "of Carpentras" and one "of Marseilles" and this record may have been sought to record the cross-border transaction where any default would be adjudicated.

98 While proctors were commissioned here who potentially could be used in litigation before the spiritual court, no evidence of the pursuit of spiritual cases was found here. For commissioning of a proctor, see: ADV E 556 fol. 38r, 30 September 1486 (*Procuratum*).

99 ADV E fol. 26r, 5 May 1486 (*Pro Petro Chaudi de Vilis promisio curialis*) refers to the official in his role of judge adjudicating by "*inquisitione*."

possessory conflicts over church lands, particularly those in which civic authorities became involved, were reserved for the official's temporal forum.[100] In addition to sentences in possessory disputes in these registers, we find concords between the bishop and syndics, brokered by the proctor fiscal and aided by arbiters.[101] As was typical of compromises, fines for their violation were stipulated, but as the notary records, they were conducted "*in forma camera*," just as the cases heard in the spiritual court.[102]

4.6 Conclusion

A wide variety of litigants participated in civil suits and the court was especially popular as a forum for debt management. As in criminal cases, the court played a role in registering and tracking disputes, authenticating evidence, marshalling expert witnesses, and facilitating and/or validating arbitration and other peace settlements. These characteristics and functions embedded the court in the regulation of the local economy, perhaps more deeply and broadly than in the regulation of morality and crime. Sanctions were mild, evidentiary standards were high, and rulings were rare, much as was true in criminal cases, though the judge made more rulings (and court orders) more commonly in civil than in criminal cases, as will be explored in the following chapter. Procedurally, both shared a conservative legal culture when it came to evidence and the protection of litigants. The desire to use the court may have lent it relevance and leverage, and its weak forms of coercion some bite. As Claustre and Gauvard asserted for secular debt litigation, much of the court's business involved the registration of debts via mandaments and the users of the court often simply sought the legitimation of their claims and the additional pressure placed upon debtors that legal action provided.

100 ADV E 564 fol. 20r, 7 November 1489 (*Sentencia causa*). He uses the term civil causes, also: see note 101.

101 ADV E 556 fol. 177r–178v, 14 December 1486 (*Compromisium inter . . . Petrum . . . episcopam et sindicos . . . Murmurione*).

102 ADV E 556 fol. 232r–v, 4 June 1488 (*Compromissum*).

CHAPTER 5

The Court as a Judicial Space: Coercion and Compliance; Sanctioning and Sentencing

5.1 Introduction

The previous chapters illustrated what conflicts the court confronted and how its audiences created a space with multiple uses – a space for criminal narratives, confessions, interrogatory investigations, and for registering conflicts and contracts into a written, trackable format, placing both the potential sinners and their disputes on the record. But the court was meant to serve as a corrective and punitive space as well, though the priority its legal functionaries attached to punishment is worth questioning. During the proceedings, the judges applied spiritual coercive tools, like excommunication, somewhat sparingly and also routinely allowed those accused of crimes to avoid stints in jail. And though the acting criminal judge, often at the prodding of the court's proctor, demanded that the alleged criminals secure sureties, he could be remarkably generous in allowing the accused extra time to find men to support their promise to reappear and expressed no concern when those men were their partners in crime. Any form of coercive imprisonment was unusual.

Criminal cases rarely reached definitive endings, and even more rarely sentences of condemnation; to a less dramatic degree, the same is true for civil litigation. Low conviction rates were common in many courts, given the attractiveness of evasion, the resistance of the accused, and, in the more scrupulously cautious Romano-canonical court systems, like this one, the high standards of proof. Just as Richard M. Wunderli concluded for London's ecclesiastical judges, the judges at Carpentras favored strict proof, mercy, and leniency. Wunderli suggests that until the turn of the 16th century respectable Londoners were satisfied with "exposing wrongdoers" and convictions were of "secondary importance:" Londoners continued to report crime to these courts despite a high acquittal rate and did not demand "strict justice." Expectations changed around the turn of the 16th century when they became "less concerned with putting their own moral correctness on display and more concerning with punishing the moral depravity of their wayward neighbors."[1] Carpentras is similar to London in its punitive approach but not, as far as we

1 Wunderli, *London Church Courts*, 61.

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can tell, the activism of its citizens. At Carpentras, the few sentences pronounced included fines, compositions, and/or orders for payment, but very rarely prison sentences. Blood sanctions were forbidden to the clergy and their courts, of course.

Barring excommunication, the judge of criminal cases ignored the many possible "medicinal" remedies associated with religious penitence. These could include, for example, the public apology demanded of ecclesiastical courts of medieval London, though there the condemned often substituted a pecuniary penance.[2] And, we do not see the dramatic exemplary public abjurations of early modern Rome, nor its well-developed penitential prisons and workhouses, described by Fosi.[3] The only comparable example at Carpentras is one in which the judge settled a dispute between a rebellious canon and his superior: he releases the canon from the court on the condition that he behave honestly and obey his superior and make that promise to the latter publically in church around the time of the Assumption of Saint Mary.[4] Even late medieval secular courts might mandate expiatory pilgrimages or imprisonment under ascetic conditions; such was not the case here.[5] This court did use the spiritual sanction of excommunication for contumacy. But the non-appearing parties often could avoid it or have it absolved easily. The judge did excommunicate some non-appearing debtors and order them to pay their creditors. More commonly, though, contumacy simply stalled the case. In general, the judge eschewed summary rulings both in criminal and civil cases and evinced few signs that punishment was his only, or even primary, goal. Certainly, this was no harsh justice. But should we expect that of this court? Of medieval courts in general?

It is easy to marginalize church courts as the exceptional courts that they indeed were, and it is reasonable to stress their idiosyncrasies and unique sanctions, but they shared legal norms and practices with secular justice. This chapter – and indeed this book – hopes to situate the study of this court within a wider history of ecclesiastical and secular justice. The court's justice in many ways was not as radically unique from that of secular courts as contemporary

2 Wunderli, *London Church Courts*, 50–1.

3 Fosi, *Papal Justice*, 162, 174.

4 ADV B 3334 fol. 153r, 7 August 1488 (*RELAXATIO Dominum Antonium Gayoti*): *"Prefatus dominus vicarius de consensu domini prioris de Greso cum pendebat terminis Ad dandas causas . . . ispsum Gayoti ab arresto predicto relaxavit cum hac condicione quod a cetero sit Gayoti in licitis et honestis prefato domino priori obediens et humilis ac ei . . . die assumpsionis Beate Marie proxime ventura petet alta voce in ecclesia coram populo quod promisit id Gayoti."*

5 Dean, *Crime in Medieval Europe*, 134–35.

and modern critics once maintained. Secular courts, too, faced similar difficulties in the adjudication of cases and punishment of criminals, and shared some judicial norms and goals, along with their more obvious differences.

As haunting as exceptional legal cases are, and as potent as stereotypes about the viciousness and bizarreness of medieval justice have been in shaping perceptions of medieval justice, studies of routine justice do not support a draconian spectacle of justice in most fora. Most criminals faced fines, were banished and/or fled, and arbitration continued to play a crucial role in dispute settlement. More and more, scholars have concluded that even for crimes as serious as homicide, the simple path of incarceration, trial, and execution was not the norm, as Daniel L. Smail found for Marseille.[6] Sarah Rubin Blanshei concurs that reconciliation of the accused and victim was valued over punishment, and many violent crimes could be atoned for with a fine, but beginning in the 13th century, punishments were becoming harsher and more impersonal, and peace pacts and fines alone were not accepted in more socially-egregious forms of homicide.[7] More on the wide usage of peace accords will follow below. For Henry V's England, Edward Powell notes that the threat of coercion, rather than the use of imprisonment and execution, typified law enforcement. On a local level reconciliation was crucial there – as it was elsewhere – and therefore arbitration continued to thrive and criminal convictions remained low: the legal system served to mediate conflicts, maintain social stability, reinforce hierarchies, and express norms.[8] Justice was a cooperative enterprise, sensitive to local needs and norms.

Despite trends towards a punitive or "repressive" justice in the later medieval legal codes, secular courts favored arbitration, promoted the use of guarantors, and preferred the payment of monetary fines (or the use of banishment) over corporal punishments. As has been addressed before and will be illustrated further below, justice in the diocesan court of Carpentras cannot be seen as fully idiosyncratic. Trevor Dean, for example, reminds us that there was increasing severity in the written law, prompted by expressions of contemporary alarm and manifesting in increasingly harsh penalties, while at the same time, there was "a selective redistribution in the application of severity" to specific groups, rather than to all. The application of punishment was defined and redefined

6 Smail, *Consumption of Justice*, 172.

7 Sarah Rubin Blanshei, "Crime and Law Enforcement," *Journal of Social History* 16 (1982): 121; "Criminal Justice in Medieval Perugia and Bolonga," *Law and History Review* 1:2 (1983): 256–67.

8 Edward Powell, *Kingship, Law and Society: Criminal Justice in the Reign of Henry V* (Oxford: Clarendon Press, 1989), 271–745.

by changing notions of who was and was not redeemable.[9] The severity of punishment – and how and to whom that punishment was applied – varied within Italy and across Europe.[10] If the "redeemable" did warrant softer treatment, might we not expect to see that reflected to a greater extent in a justice system built from a redemptive religion?

5.2 Contumacy, Excommunication, and Pressuring the Participants to Appear and Comply

Contumacy was common at Carpentras, as in any ecclesiastical or secular court. Smail and Johanna Carraway have shown that contumacy and self-exile were integral to the functioning of the secular judicial systems in France and Italy: both facilitated peacemaking and a relaxation of tensions, and created cheaper, safer ways for the accused to reintegrate into the community, and, should the accused fail to appear multiple times, meant that judges could fine those accused of crimes and waive the Romano-canonical two-witness rule (using the flight as an admission of guilt), thereby paving the way to summary judgment should it prove desirable.[11] For Italy, Carraway argues, contumacy "carried the weight of conviction."[12] Dean notes that a "legal fiction" held there that treated contumacy as a confession.[13]

But whether the contumacious at Carpentras escaped the region, avoided the local sergeants, or used their time to negotiate, we do not know. In criminal cases, contumacy did not lead to resolutions (and rarely court orders in opponent's favor in civil cases, for that matter). The immediate arrest of the most violent criminals helped the court keep track of some of the offenders, but contumacy remained a perennial challenge.

As a censure for contumacy, ecclesiastical courts commonly used excommunication and might stipulate a fine to "cleanse" or remove it.[14] When defendants or witnesses failed to appear after the delivery of a legitimate summons

9 Trevor Dean, *Crime and Justice in Late Medieval Italy* (Cambridge: Cambridge University Press, 2007).

10 Dean, *Crime in Medieval Europe*, 118–39.

11 Smail, *Consumption of Justice*, 173. Joanna Carraway, "Contumacy, Defense Strategy and Criminal Law in Late Medieval Italy," *Law and History Review* 29:2 (2011): 101–102.

12 Carraway, "Contumacy," 103.

13 Dean, *Crime and Justice*, 93.

14 As a sanction, excommunication traces back to the *Corpus juris canonici* but was expanded upon by Panormitanus, in his *Commentaria*, ad. X 5.39. pr. no. 3.

made eight days in advance, an ecclesiastical judge could charge them with non-appearance (contumacy) and excommunicate them for failing to obey orders made from his office. Carpentras was no different. But in the majority of cases, the judges at Carpentras did not excommunicate the contumacious for a first offense and allowed those cited to appear later in the day if they missed their hearing. Sometimes the judges declared parties contumacious without explicitly excommunicating them and it is not clear whether the notary simply failed to include it in his notes.

As Donald Logan notes, contumacy was a form of disobedience to both the court and the law itself.[15] Designed to enforce the court's orders, this form of excommunication was a "legal" censure as much as a "spiritual" tool used against both Christians and Jews at Carpentras. While many medieval Europeans treated it as a petty nuisance, it did pose a severe legal disability: potentially, excommunicates could not sue, protect their legal rights, or act as witnesses in any court, a situation that one's enemies could exploit, as they did routinely at Marseille.[16] The excommunicate's contracts might fail to carry weight in the officiality, as well. Excommunicated clerics were barred from performing their duties and election to office. Only a properly constituted judicial authority could pronounce it and he was required to give a formal warning in writing first: at Carpentras, the notary usually noted that the judge ordered that "letters of excommunication" be composed.

In studies of legal practice, historians often depict excommunication as an abused but ultimately weak tool of power. Rosalind Hill and Elisabeth Vodola, for example, assert that excommunication was as an increasingly toothless punitive measure that posed an easily circumvented inconvenience. While this inconvenience was ignored or even flaunted, it might have kept parishioners away from church.[17] Richard H. Helmholz, however, illustrates both its potential power and the restrictions put in place to avoid its abuse. The judicial form of excommunication was hedged in by procedural rules along with increasing limits or exceptions to its usage which were observed in English practice. Furthermore, he isolates dramatically effective uses of it to coerce emperors, to block legal maneuvers by excommunicates, and to prohibit key witnesses from

15 Donald Logan, *Excommunication and the Secular Arm in Medieval England* (Toronto: Pontifical Institute of Mediaeval Studies, 1968), 44.

16 Research on Marseille affirms that defendants exploited such opportunities in the secular civil courts see, Smail, *Consumption of Justice*, 60–61.

17 Rosalind Hill, "The Theory and Practice of Excommunication in Medieval England, *History* 42 (1957): 11; Elisabeth Vodola, *Excommunication in the Middle Ages* (Berkeley: University of California Press, 1991), 140–41.

testimony in court.[18] But he also reminds us that prelates continued to complain about its inefficacy and indiscriminate use; finally, the Council of Trent limited the routine usage of excommunication, and for civil cases, substituted a system of fines.[19]

Given that this censure was meant to be "medicinal" rather than punitive, it also could be lifted easily by the judge if it failed to achieve its goal (obedience to his mandate) or if it proved an overwhelming hardship, including the legal liability it posed. Even the *latae sententiae*, the automatic sanction of excommunication that fell upon those who committed heinous acts, including heresy or assaults on clerics, was subject to limits: exclusions could be based upon the circumstances of the attack, the intentions of the attacker, and the legitimacy of the use of force in acts of moderated self-defense.[20] These allowances may help explain why the automatic excommunication was not commonly applied in Carpentras, though at least two men appear to have suffered it.[21]

The judge also could wield excommunication as a punishment for a crime in church courts, an action he rarely took at Carpentras. In his study of 15th-century Moustiers-Sainte-Marie, in the Basses-Alpes, M. Raymond Collier seems disturbed by its overuse as a punishment for petty crimes like theft and minor assaults and concludes that it was "abused" for "the profit of private interests."[22] Wunderli also discusses how excommunication allowed the sheriff to take the accused into custody, if the Chancery also signed off on it, but doubts that excommunication bothered any but respectable, (normally) law-abiding citizens in London.[23] At Carpentras, the judge excommunicated participants as a sanction for ignoring court orders (almost always court summons).

In the criminal cases at Carpentras, the court's proctors regularly requested excommunication against contumacious defendants. While presiding over criminal cases, the judge normally allowed the accused until the end of the day to appear and might belay his order whenever a proctor appeared unexpectedly to represent the defendant (an action to which the court's proctor

18 Helmholz, *Classical Canon Law*, 369–83.

19 Helmholz, *Classical Canon Law*, 383–89.

20 Ibid., 383–89.

21 ADV B 3334 fol. 36v, 2 May 1487 (Fisc. c. Moric). This case was discussed in Chapter Two. See also ADV B 3334 fol. 145v, 2 July 1488 (Fisc. c. Peyssoneri).

22 M. Raymond Collier, "Excommunications à Moustiers-Sainte-Marie (Basses-Alpes) au début du XV^{e} siècle," *Bulletin Philologique et Historique* (1966), 577–79. It is difficult to compare his findings to others: he does not include yearly averages and because he is examining a register of excommunications there is no way to know the proportion of accused parties who faced this censure.

23 Wunderli, *London Church Courts*, 53.

occasionally objected as the defendant's personal appearance was required).[24] In total, the judge excommunicated only eighteen individuals (all male) and one group, the temporal, civic legal officials of Carpentras, who continued to pursue legal proceedings against a cleric despite his privilege.[25] But, the judge rejected or ignored requests to excommunicate fifteen others.[26] Failure to receive the summons was an acceptable excuse for contumacy, but distance and occupational requirements, like the need to attend to the harvest, were rejected. Similar conclusions hold true for witnesses, though in only three cases did the judge sanction witnesses for their failure to appear.[27] In practice excommunication may have served as a type of fine, too, and a standard 25 livre fee was necessary to cleanse it.

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24 For an example of such a delay, see fol. 132r, 14 April 1488 (Fisc. c. Caponi).

25 ADV B 3334 fol. 128v, 10 March 1488 (Fisc. c. Arnaud); fol. 136r, 12 May 1488 and fol. 137r, 16 May 1488 (Fisc. c. Barat); fol. 39v, 11 May 1487 (Fisc. c. Caponi); fol. 69r, 13 July 1487 (Fisc. c. G. Clemeti); fols. 119v, 18 January and 126v, 28 February 1488 (Fisc. c. de Bonoloco); fol. 19v, 13 February 1487 (Fisc. c. de Pulcraquercus); fol. 128v, 10 March 1488 (Fisc. c. Eraud); fol. 46v, 1 June 1487 (Fisc. c. Fachaud); fol. 38r, 11 May 1487 (Fisc. c. Moric); fol. 128v, 10 March 1488 (Fisc. c. Odol); fol. 149v, 18 July 1488 (Fisc. c. Pascali); fol. 147r, 7 July 1488 (Fisc. c. Peyssoneri); fol. 71r, 19 July 1487 (Fisc. c. Ranelli); fol. 33r, 27 April 1487 (Fisc. c. Regis); fol. 38v, 11 May 1487 (Fisc. c. Scoferi); fol. 4r, 15 January 1487 (Fisc. c. Sigaud); fol. 64v–65r, 7 October 1487 (Fisc. c. Soyrini); fol. 63v, 6 July 1487 (Fisc. c. Vines). The temporal officials of Carpentras were excommunicated for failing to appear and respond; see fol. 131r, 29 March 1488 (Meyheri c. Carpentras). Excommunication for contumacy was requested, but not granted for fifteen others, typically because their proctor appeared and successfully blocked the request; they are not accounted for here.

26 See ADV B 3334: fol. 11r, 26 January 1487 (Fisc. c. Botardi) [left without a further day assigned]; fol. 38v, 11 May 1487 (Fisc. c. Caneneti); fol. 132r, 14 April 1488 (Fisc. c. Caponi); fol. 48r, 1 June 1487 (Fisc. c. Clemeti, C.) [re-summoned]; fol. 136r, 10 May 1488 (Fisc. c. de Riparia); fol. 24r, 19 March 1487 (Fisc. c. Guiffredi); fol. 66v, 12 July 1487 (Fisc. c. Laudon) and (Fisc. c. Laudon/Ricard); fol. 79v, 27 August 1487 (Fisc. c. Mayheri); fol. 139r, 20 May 1488 (Fisc. c. Motagard); fol. 146v, 4 July 1488 (Fisc. c. Peysoneri) [his second failure to appear led to excommunication]; fol. 169r, 7 November 1488 (Fisc. c. Ratelle); fol. 35r, 2 May 1487 (Fisc. c. Scoferi) [his second act of contumacy led to excommunication]; fol. 24v, 19 March 1487 (Fisc. c. Tersclini); fol. 146v, 4 July 1488 (Fisc. c. Varengrer). It is not clear why some were rejected or ignored: the judge rejected one request because two defendants, a couple, had not been served personally (idem, Laudon and Laudon/Ricard). One man was simply re-summoned, rather than excommunicated (idem, Chantecler).

27 ADV B 3334 fol. 76r, 30 July 1487, fol. 78v, 8 August 1487 and fol. 79r, 17 August 1487 (Fisc. c. Caneneti): fol. 97r, 29 October 1487 and fol. 53v, 9 June 1487 (Fisc. c. Fachaud); fol. 97v, 29 October 1487 (Fisc. c. Roque). The judge did find one man's absence to attend the wedding of his daughter to be a valid excuse [(fol. 97v, 29 October 1487 (Fisc. c. Roque)].

Only once does the judge use excommunication for other violations in criminal cases: he excommunicated the Augustinian canons as a group for deviating from the route during a procession and ignoring the three warnings he himself made while processing (therefore they ignored an order from a superior churchman).[28] Again, the three warnings suggest conformity to the tradition stemming from the Gospel of Matthew to warn and confront your brother thrice. He also fined them 25 livres of silver. They appealed the next day, perhaps shocked not just by the sum, but in protest over the judge's competency (see Chapter Three).

But only a third of the other excommunicates apparently bothered to cleanse themselves of the censure, and there is no indication that excommunicates were barred from legal motions in the criminal court. Marginal notes by the notary indicate that three of the eighteen individuals paid fees for their absolution.[29] Three others refused the expenses incurred for contumacy (including one of the men who paid for cleansing) and were absolved, though their explanations were unrecorded.[30] Six of the censured individuals were clerics, but only one appears to have paid to have it lifted.[31] Though this impediment could have carried severe restrictions upon their livelihoods, we cannot conclude that clerics were more likely to seek absolution. To those from whom the order was lifted, the judge granted copies of letters proving this, a useful item for blocking any later claim that the individuals suffered from this legal impediment.

Perhaps the most unexpected material on excommunication concerns the four Jewish men accused before the criminal judge for unclear offenses, three of whom were contumacious. In reaction to the nonappearance of two of them, the proctor fiscal demanded excommunication. Though one of them did appear that day, the other did not and was excommunicated.[32] Against a third

28 ADV B 3334 fol. 40r–v, 16 May 1487 and fol. 40v, 17 May 1487 (Fisc. c. de Pulcraquercus, c. de Riparia, c. Pichor, c. Rossolet, and c. Ubiton). Two of them claimed that the local governor was responsible for punishing them, but this was ignored. See Chapter Three for a detailed discussion of this case and others related to it.

29 ADV B 3334 fol. 38r, 11 May 1487 (Fisc. c. Moric); fol. 71r, 19 July 1487 (Fisc. c. Ranelli); fol. 38v, 11 May 1487 (Fisc. c. Scofer).

30 ADV B 3334 fol. 73r, 23 July 1487 (Fisc. c. Ranelli); fol. 33r, 28 March 1487 (Fisc. c. Regis); fol. 7r, 16 January 1487 (Fisc. c. Sigaud).

31 They included de Bonoloco, Barat, de Pulcraquercus, Fachaud, Ranelli, Soyrini. See references infra, notes 11.

32 For the request mooted by the appearance of the cited, see ADV B 3334 fol. 147r, 7 July 1488 (Fisc. c. de Beaucayre). For the granting of excommunication against the other, see ADV B 3334 fol. 169v, 13 November 1488 (Fisc. c. de Stella): "*Comparavit Albinhaci*

contumacious Jewish man, Salamon de Narbona, the judge ordered "letters of separation," using a phrase found only in this case.[33] Responding to Salamon's newly commissioned proctor, the judge simply absolved him that day.[34] While contumacious Christians usually failed to find acceptable excuses, the court simply re-scheduled another of Salamon's audiences "because of the *Iudayca*," which probably refers to the Jewish Sabbath, as this audience was originally scheduled for a Saturday and was then re-scheduled for Monday.[35] Jews pursued cases in the civil court, typically over debts, and it is possible that while this state of "separation" compromised the legality of any new debt contracts or ongoing litigation.

While slight in the criminal records, the evidence illustrating the use of a form of excommunication against Jews should provoke reconsideration of this sanction. It is one of the most overt examples of its legal evolution from a spiritual tool against recalcitrant, disobedient Christians to simply a routine legal tool useful against any participant in the Church's court. The legality of its usage against Jews, however, was doubtful at best, but not unique to Carpentras. Joseph Shatzmiller found examples of it in a few 13th-century court cases, in decrees of French prelates, and in sample letters in a 14th- and 15th-century formulary for the officiality of Marseille and Aix.[36] Responding to Shatzmiller's findings, William Chester Jordan explains that this usage was based upon a "deliberate" or "creative" misinterpretation of *Post miserablem*, a letter by Innocent III that was incorporated into the *Decretals* of Gregory IX.[37] He concurs with Frederic William Maitland's supposition that the excommunication of Jews was a move to expand ecclesiastical jurisdiction, but he concludes that the deployment of

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notarius fisci accusans contumaciam eiusdem delati . . . petivit litteras excommunicatorias sibi decerni Dominus locumtenens in contumaciam eiusdem delati . . . contumaciam reputavit litteras excommunicatorias contra eum decernendo."

33 ADV B fol. 85v, 10 September 1487 (Fisc. c. de Narbona): "*Comparavit Rostagni accusans contumaciam . . . Dominus eundem delatus contumaciam reputavit litteras segregatorias contra eum decernendo*." This phrase also does not appear in the civil records closely overlapping this period (ADV B 3333, covering 1486 and 1487).

34 Ibid. Two audiences were heard on the same day and folio.

35 ADV B 3334 fol. 87r, 15 September 1487 (Fisc. c. de Narbona).

36 Joseph Shatzmiller, "Jews Separated from the Communion of the Faithful in Christ," in *Studies in Medieval Jewish History and Literature*, (ed.) Isadore Twersky (Cambridge, MA and London: Harvard University Press, 1979), 307–14. See also Roger Aubenas, *Contribution à l'histoire des officialités au Moyen Âge. Recueil de lettres des officialités de Marseille et d'Aix, XIV^e–XV^e siècle*, 2 vols. (Paris: Picard, 1937), 37 and 71–73. See texts 151, 236 and 237.

37 William Chester Jordan, "Christian Excommunication of the Jews in the Middle Ages: A Restatement of the Issues," *Jewish History* 1:1 (1986): 31–33.

excommunication against Jews occurred only briefly and sporadically in the 13th century and only in exceptional circumstances.[38] The eminent canonist Hostiensis explicitly rejected the misreading of the texts in question, affirming that the Jews could not be excommunicated as they were not in communion with Christians. Hostiensis' perfectly logical opinion was picked up by glossators, and, according to Jordon, the use of the sanction against Jews, came to an end by the early 14th century.[39] He suggests that the late medieval formulary simply contains outmoded letters recopied from 13th-century models.[40] Carpentras may be anomalous.

In 1275, after a prelate excommunicated a group of Jews for their failure to appear in court, papal delegates rescinded the order, forbade further harassment of the Jews and established new limits on its usage against Jews in the Comtat Venaissin. The pope clarified that franchise-holders could not usurp the pope's seigneurial privilege of jurisdiction over the Jews. Furthermore, as Jordan notes, this rejection made it clear that the notion of excommunicating a Jew was aberrant and improper.[41] Nevertheless, this could suggest that it was legitimate if used by one with such a privilege. As the bishop was the lord of the Jews of the Comtat, and assumed seigneurial jurisdiction over them (renewed regularly by a corporate oath and fee), his designated servant should be able to order it by his office. A distinction may have been made between excommunicating the Jews as a group as an exercise of abusive power as opposed to excommunicating a Jewish individual in a courtroom. The use of excommunication against Jews may have been a regional practice, possibly reinforced by the formulary of Marseille or copies of it.

In sum, the judge followed the legal requirements when excommunicating Christians, if not Jews, as a quotidian, if not fearsome, legal sanction. This reluctance, or care, in using this procedure resembles his reluctance to hold defendants in custody for long periods (as will be seen below), as well as the freedom with which he granted the release of defendants for work or during spates of holy days.

The judge never convicted alleged criminals *in abstentia* and excommunication seemed to have been geared to coerce appearance, rather than as a punishment for alleged crimes. This contrasts to how the contumacious could

38 Jordan, "Excommunication of the Jews," 34–35, and 37; Frederic Pollock and William Frederic Maitland, *The History of English Law*, 2nd ed., 2 vols. (Cambridge: Cambridge University Press, 1898, reprint, 1968), 439.

39 Ibid., 34–35.

40 Ibid., 36.

41 Ibid., 35.

be treated in secular Roman law courts. While a strict adherence to the *ius commune* prohibited convictions *in absentia* for corporal or capital punishments, it did allow judges to fine the absconding criminal. According to Dean, convictions *in absentia* were common in the secular courts of Italy, and in Florence such convictions were more common than cases in which the accused appeared. Some civic statutory laws even allowed corporal and capital penalties *in absentia* for certain types of crimes or criminals (bandits, foreigners, and vagrants).[42] As Smail shows for Marseille, absent criminals could be condemned for contumacy fines that reflected the severity of their alleged crimes: these fines served as a sort of pecuniary sentence, and given that fines were the norm for violent crimes, including homicide, they provided a fitting – and useful – end to cases. These fines supported a system in which self-exile and banishment was common and allowed the seizure of the condemned person's goods.[43] While this was not true for criminal offenses at Carpentras, in civil cases, the judge did order contumacious debtors to pay their creditors (though he did not condemn them with a formal, terminal sentence of condemnation and the order could be challenged later).

Just as in criminal cases, contumacy was common in civil litigation, and again, the sitting judge (almost always the official himself) did not zealously resort to excommunication and rarely excommunicated anyone at the first audience. In the civil litigation as a whole, he deemed about 40 percent of those who did not appear as contumacious (almost always the defendant), and from that group he excommunicated about 42 percent of them.[44] Immediate excommunication for those failing to appear at the first audience was rare and occurred in only 8 percent of the cases. Witnesses who failed to appear sometimes received a "letter of compulsion," a mandate to appear or suffer the court's censure.[45] In dozens of cases the judge simply ignored pleas by the proctors to act against the contumacious. Only a small number of the excommunicated sought absolution.

When defendants did not appear in debt cases, the judge could demand that the debtor pay when he or she was able, leaving the case open with no further audience assigned. In thirty-four cases with contumacious defendants, he ordered the notary to compose a letter to that effect and this marked the end of the suit; this was not a definitive sentence – which would demand a formal appeal to redress – but a rather a court order that could be rescinded

42 Dean, *Crime in Medieval Europe*, 10, 42; *Crime and Justice in Late Medieval Italy*, 92.

43 Smail, *Consumption of Justice*, 163, 187–88.

44 To have a better sense of the court's use of contumacy, and its nature as a coercive or punitive court, the quantitative work here on excommunication covers all civil litigation.

45 See also Lefebvre-Teillard, *Les officialités*, 83.

if one of the participants wished to contest the order. A letter from the court ordering payment could then serve as a type of proof and form of judgment for the creditor. Plaintiffs apparently accepted this resolution and never balked at it. This reinforces the idea that the court played the role of a registrar, and, for some creditors at least, may not have been expected to definitively resolve debt disputes.

Generally, if a litigant failed to show by the third summons, the judge could excommunicate him or her and peremptorily rule upon the case without their presence. This procedure was to be applied strictly in punitive cases over marriage.[46] But in damage causes, including debt, contract, or property disputes, the status of the litigant could determine how and when the judge might apply this censure. Because the Church claimed penitential jurisdiction over laypeople, litigation among them was technically defamatory in nature, and as in any defamatory case, the judge could immediately excommunicate the parties for any failure to respond to a legitimate, successfully delivered summons.[47] Plaintiffs who abandoned the case could be charged all costs of the trial. When defendants were contumacious, they could be liable for all costs up to the point of the failed appearance: hence, some litigants appeared to fight the ruling and the expenses associated with it.[48] Nonappearance lengthened the time and cost of the case, an irritant to which proctors and judges sometimes allude with a formulaic comment that the case "should not be dragged out" (*extrahendi*).[49]

Studies of church courts usually conclude that in the civil forum suspension preceded excommunication. Charles Donahue notes that suspension, which resulted in various restrictions at law and in rites, was the usual penalty for initial non-appearance in Canterbury, while continued, recalcitrant contumacy resulted in excommunication.[50] Failure to appear was the most common cause of delay in almost every civil case there in which a *processus* survived. Focusing primarily on punitive causes in London, Wunderli also finds that suspension was the common first response, while excommunication was rare. In his work on French church courts, Paul Fournier simply states that a partial suspension

46 Brundage, *Canon Law*, 129–30.

47 Thanks to Dr. Wolfgang Mueller for drawing my attention to this distinction.

48 Johannes Teutonicus explains this in his *Apparatus* to *Quinque compliationes antiquae* (4 Comp. 1.16.1 v. *propter hoc*): for a discussion of this rule, see Brundage, "Taxation of Costs," 575.

49 See, for example, ADV B 3333 fols. 17v, 3 March 1486 (Malabarba c. Berien) and 22r, 17 March 1486 (Beyden c. Truchet).

50 Donahue, "Introduction," 39–40.

was first applied, and then full excommunication.[51] But, as Helmholz notes, excommunication became the "regular sanction" for contumacy throughout Europe in the later Middle Ages.[52] According to the records, the judges at Carpentras never used suspension and only occasionally declared the nonappearing party excommunicate; his hesitancy to apply excommunication for first offenses, though, seems to be shared with other church courts judges.

Like all elements of the court's practices, contumacy and the sanctions for it must be understood within the larger perspective of dispute resolution. Coercive tools worked within a complementary system of repression and reconciliation. Judges may have been reluctant to excommunicate lest it undermine the possibility of peaceable out-of-court settlements. Take for example an event from February 1486, in which the defendant Francisco Berrieri failed to appear at the third audience.[53] The plaintiff's proctor, who came prepared with evidence (some written notes by a notary) and hoped to confront the defendant and wrap up his cause, requested that his adversary be labeled contumacious and excommunicated. The defendant's proctor asked for a third delay. The judge noted that the cause should not be drawn out further and agreed to the demand, *but only if the parties were not engaged in forming a concord*. He was willing to use sanctions to coerce, but not thwart resolutions. If, as Jacques Chiffoleau suggested, excommunication served a "pedagogical" function, marking poor behavior, and this judge wished to support peace resolutions as good behavior, this rationale makes sense.[54] As it happened, no more was recorded.

5.3 Arrest, "Custodial" or Preventative Imprisonment, and Bail during Criminal Trials: Judicial Caution and Criminal Networks

Many of those accused of a crime faced arrest and/or jail time during their trial either within the bishop's palace (sometimes on a rather ad hoc basis), the papal prison, or occasionally by town prisons, particularly the one at Carpentras. All the towns of the Comtat had prisons by the 14th century, though Chiffoleau notes they were modest, filthy, sometimes in states of lamentable dilapidation, and of dubious security (based on the complaints of functionaries and

51 Fournier, *Les officialités*, 153.

52 Helmholz, *The Spirit of Classical Canon Law*, 391.

53 ADV B 3333 fol. 17v, 3 March 1486 (Malabarba c. Berien).

54 Chiffoleau, *Les justices du pape*, 266.

numerous cases of escape).[55] In the 15th-century records of Carpentras' officiality, detainment included general house arrest and consignment to specific quarters. Given that one of the accused escaped from his locked room in the bishop's palace, the security of the confinement may have remained loose.[56] A few of the detained contested the venue. A cleric who complained of the cruelty and ill-equipped nature of his post-arrest confinement was granted his request to be moved into the care of the bishop.[57] The judge also transferred into the custody of his judicial camera a priest who asserted that his "honesty" merited him a release from the prison of the city of Carpentras.[58] In general, jail stays were short, negotiable, and sparingly ordered.

In his study of 14th-century Avignonese and Comtadine courts, Chiffoleau found that imprisonment *primarily* was a preventative precaution against flight rather than a penalty, and adds that it is a "modern" notion that prisons be used for rehabilitation.[59] His case study focuses on the use of imprisonment by l'Auditeur de la Chambre Apostolique, which had jurisdiction over Avignon and the Comtat and competency over clergy. The vast majority spent less than a year in jail (84 percent) and about 34–42 percent spent less than a month imprisoned. Only about 15 percent of the incarcerated spent over a year in prison and 3 percent more than five years. Those facing assault charges had the shortest stays and 92 percent of them remained in prison only until the judge ruled (usually condemning them to a simple fine). In cases of homicide, most inmates were incarcerated for one to five years, but about 7 percent "perpétuellement." Thieves spent anywhere from several months to a few years in prison: the first few weeks appear to have been a precaution, but one which could become akin to a punishment, he suggests. He concludes that in homicide, and in some cases theft, incarceration was or became penal, and he objects to earlier assumptions by French historians that imprisonment did not yet have a punitive function. Though he speculates that the courts in the region, including secular ones, were utilizing punitive imprisonment, they lacked the ability to maintain a systematic regime that could sustain punitive imprisonment yet. As an alternative to prison, banishment was also employed.

In England, though most clerics secured their release through purgation, Allison Hardy found that the clergy in particular could languish in their episcopal (or occasionally royal) jails for long periods of time, though sometimes

55 Chiffoleau, *Les justices du pape*, 226–27.

56 ADV B 3334 fol. 49v, 6 June 1487 (Fisc. c. de Fonte).

57 ADV B 3334 fol. 65r, 11 July 1487 (Fisc. c. Michael).

58 ADV B 3334 fol. 165r, 20 October 1488 (Fisc. c. Asson).

59 Chiffoleau, *Les justices du pape*, 227–232.

only due to accident or neglect rather than as punishment.[60] Bishops and monasteries were early innovators and creators of a punitive imprisonment that was spawned by penitential practice, the prohibition against blood sanctions, and perhaps even out of a desire for a discreet punishment for clergy.[61]

In general, ecclesiastical and secular courts tended to use jail for short, "custodial" or "preventative" holding and shared an aversion to long prison stints during trials. Both systems used jails to hold the accused and to replace pecuniary punishments. Nicole Gonthier finds that incarceration was essentially preventative and prison stays rarely were prolonged in the various courts of Lyon. Usually defendants remained in jail just until they were able to secure a guarantor for their release. Only clerics accused of grave crimes who posed a danger to the community were held under closed internment (as opposed to be confined to an area).[62] Generally, imprisonment was deemed a severe response: as Dean notes, even a few days behind bars was shocking and even "intolerable." Records from Paris and Arras indicate that most of those who were seized spent less than two days in holding and rarely more than a few weeks; at the more severe end of the spectrum, at Bolonga over half of the jailed were held longer than a week, but few of them for more than a month.[63] While secular law in England and Germany limited legal authorities to using jail as a preventative measure or as a substitute for fines (but not blood sanctions), punitive incarceration increasingly was used in Italy, France and Spain in the 15th century for both petty and serious crimes.[64]

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60 McHardy, "Criminous Clerks," 169–73.

61 John H. Langbein, "The Historical Origins of the Sanction of Imprisonment for Serious Crime," Journal of Legal Studies 5:1 (1976): 37–38; Peters, "Prison before the Prison: the Ancient and Medieval Worlds," in *The Oxford History of the Prison*, (ed.) N. Morris and D.J. Rothman (New York and Oxford, 1998), 25–41.

62 Gonthier, *Délinquance, justice et société*, 213–18.

63 Dean, *Crime in Medieval Europe*, 121. Claude Gauvard, Mary Rouse, Richard Rouse, and A. Soman, "Le Châtelet de Paris au début du XV^{e} siècle d'après les fragments d'un register d'eEcrous de 1412," *Bibliothèque de l'Ecole des Chartes* 157 (1999): 573–78. Robert Muchembled, *Le temps des supplices: de l'obéissance sous les rois absolus, XV^{e}–XVIII^{e} siècle* (Paris: Armand Colin, 1992), 44.

64 Dean, *Crime in Medieval Europe*, 121–23; Gauvard, *De grace especial*, 933; Edward M. Peters, "Prison before the Prison: The Ancient and Medieval Worlds," in the Oxford History of Prisons, (eds.) Norval Morris and David J. Robinson (Oxford: Oxford University Press, 1998), 25–41; John H. Langbein asserts that punitive imprisonment did not replace blood sanctions, though recent scholarship has demonstrated it could [see his "The Historical Origins of the Sanction of Imprisonment for Serious Crime," *Journal of Legal Studies* 5:1 (1976): 37–38)].

At the officiality of Carpentras, jail similarly was used sparingly and almost always as a temporary, preventive, custodial tool in criminal cases. The clergy in particular were well-networked, allowing them to secure sureties or guarantors for their reappearance and obtain their release, and the judge was flexible about the character of those who vouched for them. In total, eighteen persons served one or more days in jail just before or during their trials.[65] Three of the imprisoned swore oaths not to escape or face a penalty of excommunication and fines. Such fines ranged from 25 livres (the standard fine for contumacy) to 100 livres.[66] Most of the jailed spent two to ten days in prison and then met the demands for their release.[67] Only one man, Dominus Antonio Gayoti, a priest from Pernes-les-Fountaines was detained for over a year; he suggested that this was neither a standard nor just length of time and doubtlessly was surprised given that his first stay was only four days.[68] Accused parties were released via several paths: three swore an oath to reappear on penalty of a fine and excommunication; ten swore oaths and found oath-helpers and guarantors (*fideiussores*); two had their cases terminated.

65 Eleven of them were arrested and incarcerated at the end of their first audience (those who were arrested but released the same day were excluded). The cases in which men were jailed include: ADV B 3334 fol. 160r–v, 9 September 1488, where the case dropped (Fisc. c. Amauri); fol. 28v, 16 April 1487, and released on fol. 30r, 18 April 1487 (Fisc. c. Arnaud, Ba.); fol. 161v, 6 October 1488 (Fisc. c. Asson); fol. 29r, 16 April 1487 and released on fol. 32r, 26 April 1487 (Fisc. c. Balneol); fol. 150v, 23 July 1488, and no further record (Fisc. c. Bertana); fol. 104r, 28 November 1487, and released on fol. 106v, 1 December 1487 (Fisc. c. Daniel); fol. 49v, 6 June 1487 (Fisc. c. de Fonte); fol. 29r, 16 April 1487, and reaffirmed 32r, 26 April 1487, and arrested again (Fisc. c. de Murs); fol. 113r, 22 December 1487, and released on fol. 29v, 18 April (Fisc. c. de Petra); fol. 102r, 26 November 1487, and released on fol. 108r, 5 December 1487 (Fisc. c. Fautin); fol. 49r, 2 June 1487 and released on fol. 49v, 6 June 1487, and is held again for new accusations fol. 58r, 22 June 1487, and released again on fol. 153r, 7 August 1488 (Fisc. c. Gayoti); fol. 29r, 16 April 1487 (Fisc. c. Gusi); 29r, 16 April 1487, and release on fol. 32r, 26 April (Fisc. c. Joli); fol. 65r, 11 July 1487, and released on fol. 74r, 24 July (Fisc. c. Michael); fol. 82v, 31 August 1487 and renewed after new accusation on fol. 88r, 17 September (Fisc. c. Motet); fol. 29r, 4 April 1487 and release on 18 April, on fol. 30r, 18 April 1487 (Fisc. c. Odoard); fol. 32v, 26 April, and release on fol. 33r, 28 April (Fisc. c. Taxil).

66 Respectively, ADV B 3334 fol. 165r, 20 October 1488 (Fisc. c. Asson) and fol. 65r, 11 July 1487 (Fisc. c. Michael). The last required the aid of guarantors.

67 The duration for three persons is unknown.

68 His stay extended from 22 June 1487 to his release on 7 August 1488. He requested the consideration of his grievance on 4 August.

Most of the men who were arrested, or threatened with arrest, were released without serving time in custody. To avoid incarceration, sixty-seven of the accused swore an oath to return, typically backed up by a pledge of his goods (an *obligatio*). Each faced a 25 livre fine and excommunication should he fail to return. The judge – sometimes at the prodding of the court's proctor – demanded a *cautio* from twenty-five of the accused along with an oath-helper and guarantor (*fideiussus*) who swore that the defendant would return for the next audience and put his own goods at risk under "similar obligations."[69] Immediately after their hearings, the accused and/or their guarantors made their oaths before two witnesses. Thirty-five men pledged themselves as guarantors.[70] Typically only one guarantor was required, though a few men employed two or more at one time. Only two men failed to find a guarantor to swear a pledge.[71] One man, a laborer, had the requirement waived due to his poverty.[72] The judge sometimes released the accused for the day or until the next audience in order to secure his surety: some returned, some were deemed

69 This should not to be confused with compurgation. Only three men, all clerics, were ordered to pay bails higher than 25 livres. From two, 50 livres were required, perhaps due to the gravity of their crimes (a bloody physical assault and a very public criticism of the policies of the diocese). A third was required to secure sureties for each of his three release requests in the course of the trial: 50 livres, 100 shields and 25 shields.

70 One guarantor served this role twice, and, hence, there were thirty-six pledges by thirty-five men (one served twice). Half of the pledges were made by clerics; notaries (seven) and priests (six) were the most common. Only three of the others had any identifier: one plowman and two men labeled "*nobilis*." See ADV B 3334 fol. 26v, 31 March 1487 (Fisc. c. Armaneri); fol. 34v, 26 April 1487 (Fisc. c. Ba. Arnaud); fol. 148v, 14 July 1487 (Fisc. c. Badet); fol. 32r, 26 April 1487 (Fisc. c. Balneol); fol. 97r, 26 October 1487 (Fisc. c. Barber); fol. 150v, 23 July 1488 [two men acted in this capacity] (Fisc. c. Bertrana); fol. 113v, 23 December 1487 (Fisc. c. Clarenci); fol. 15r, 7 February 1487 (Fisc. c. Clemeti); fol. 2v–3r, 9 January 1487 [three men] (Fisc. c. Dalphin); fol. 103r–v, 28 November 1487 and 110v, 11 December 1487 [four men total] (Fisc. c. Daniel); fol. 2v, 5 January 1487 (Fisc. c. de Anterone); fol. 8v, 19 January 1487 (Fisc. c. de Gigondas); fol. 149r, 16 July 1488 (Fisc. c. de Marius); fols. 33v, 28 April 1487 and 164r, 10 October 1488 (Fisc. c. de Murs); fol. 88r, 31 August 1487 (Fisc. c. Furini); fol. 33r, 26 April 1487 (Fisc c. Grisi); fol. 49v, 6 June 1487 (Fisc. c. Gayoti); fol. 30r, 28 April 1487 (Fisc. c. Joli); fol. 65v, 11 July 1487 and fol. 74r, 24 July 1487 (Fisc. c. Michael); fol. 31v, 26 April 1487 (Fisc. c. Odoard); fol. 142v, 6 June 1488 [two men] (Fisc. c. Jo. Raynard); fol. 142r, 6 June 1488 (Fisc. Ja. Raynard); fol. 6r, 15 January 1487 (Fisc. c. Rostaing); fol. 138v, 17 May 1488 (Fisc. c. Sayini); fol. 33r, 28 April 1487 (Fisc. c. Taxil); fol. 115v, 24 November 1487 (Fisc. c. Villar).

71 ADV B 3334 fol. 44v, 25 May 1487 (Fisc. c. de la Jon); fol. 69v, 14 July 1487 (Fisc. c. Millon).

72 ADV B 3334 fol. 51v, 8 June 1487 (Fisc. c. German).

contumacious and others simply drop from the record.[73] A small number were freed from arrest due to a contravening court order, whether to secure stolen property or due to a transfer to another court.[74] Guarantors came from various walks of life, but many were part of the familial or social network of the accused.[75]

Accused parties, including accomplices, could act as guarantors, and an inspection of them reveals social – and criminal – networks. On 16 July 1488, the noble clerics Peire Badet and Tomas de Marius, both from Mazan, provided surety for one another after they confessed to committing an assault together (along with a third man).[76] A group of men, mostly clerics from Carpentras and neighboring Mazan, bound by their offenses and anti-Jewish sympathies also engaged in such mutual aid. On 16 April 1487, six men, all clerics from Mazan (the priests Baudin Arnaud, Johan Balneol, Johan Odoard, and Dominus Amedé Taxil, and the clerics Johan Grisi and Johan Joli), were accused of committing "digressions" and verbally attacking the Jews of Mazan during the previous weekend. Odoard acted as guarantor for Balneoli and Grisi. Taxil did the same for Joli, and Arnaud for Odoard. Taxil and

73 Some of them were charged later with contumacy or their case stalled, perhaps due to flight. Eight men were required to secure surety at a later time, but the oath was never recorded (and therefore not included in the calculation of those who swore). One man argued he could not find a necessary guarantor, despite the multiple delays granted to do, and then no more was recorded; see ADV B 3334 fol. 8v, 19 January 1487; fol. 42r, 18 May 1487; and fol. 44v, 25 May 1487 (Fisc. c. de la Jon). Two men failed to return and were charged with contumacy; see ADV B 3334 fol. 36v, 2 May 1487 (Fisc. c. Moric); fol. 38v, 11 May 1487 (Fisc. c. Scoferri). Three simply drop from the record after the request; see ADV B 3334 fol. 19r, 23 February 1487 (Fisc. c. Bladeri); fol. 7r, 19 January 1487 (Fisc. c. de Bosco); fol. 27r, 30 March 1487 (Fisc. c. Scoferri).

74 Three men were freed to fulfill a court order: one to prepare to quit the fine attached to his sentence of condemnation and two to recover stolen property. See, respectively, ADV B 3334 fol. 55v, 21 June 1487 (Fisc. c. Clemeti); fol. 69v–70v, 17 July 1487 (Fisc. c. Jo. Raynard); fol. 69v, 13 July 1487 (Fisc. c. R. Troch). Five men requested release not from this court, but from an arrest by a temporal authority; see ADV B 3334 fol. 123v, 13 February 1487 (J. Arnaud); fol. 8r, 19 January 1487 (Fisc. c. Dalphin): fol. 10r, 19 January 1487 (Fisc. c. Marcelli); fol. 131r, 29 March 1487 (Fisc. c. Mayheri); fol. 69r, 13 July 1487 (Fisc. c. R. Troch).

75 Eight family members acted as guarantors (three fathers, three brothers, a son and a grandson).

76 ADV B 3334 fols. 148v (Fisc. c. Badet) and 149r, 16 July 1488 (Fisc. c. de Marius). This was allowed despite the fact that the latter was above twenty years-old but under twenty-five, the age of legal majority.

Arnaud were aided by notaries from Carpentras and Mazan.[77] In the end, most of them helped one another as guarantors, leaving no man without aid. On 2 October 1488, Odoard was part of a cohort of men from Mazan who were arrested and accused of capturing and forcing a baptism upon a young Jewish boy. The group included the cleric Johan Asson, the priest Dominus Johan de Murs, and Balthesare Guilhard. To support his pledge to return to court after his release, the priest turned to two men from Carpentras: the cleric Cristofor Daniel and the noble Johan de Sancto Romano, both of whom were implicated in the brutal beating of a priest named Astorg de Petra, who was a neophyte (presumably meaning a newly converted Jew in this case).[78] By tracing these links, we glean the idea that the judge was identifying and targeting a group of offenders who were disrupting the peace in the two largest towns of the diocese and were united by a shared antipathy towards Jews. The judge may have accorded a courtesy to clergy and recognized the limits of their social networks (since there are no comparable circumstances involving laypersons) or simply accepted that he could demand little more from them. Given that they were clergy and interconnected in prominent in local disturbances, these men should not have been hard to find and arrest in a group, if necessary. One's reputation need not be spotless to serve as a guarantor.

5.4 Punishment and Resolution in Criminal Cases

Because the court evolved as the public counterpart to the private confessional, many of its possible sanctions were penitential in nature. For laypeople, this included abjuration, excommunication, and/or penance. Penance was highly discretionary but included purgative (pilgrimages, fasts, and acts of public penitence) and retributive (satisfaction, compensation, restitution) elements.[79] Clerics could face these as well as additional sanctions, such as suspension, the degradation of orders, and imprisonment. For offenses deemed especially heinous, the judge could degrade and remit a cleric to the secular arm – done most commonly in cases of heresy and homicide – which could exact

77 Notaries Magistri Tromphius Esbradi of Mazan and Jacme Salome of Carpentras acted in this role. Their relationship to these individuals or the group is unclear, but Jacme worked as a notary for Pons Arnaud and his mother Dulcia: they could be Baudin's relatives, though their family name is too common to conclude this. See ADV 3333 fol. 232v, 22 October 1487 (Molin c. P. and D. Arnaud).

78 ADV B 3334 fols. 33v, 28 April 1487 and 163v, 10 October 1488 (Fisc. c. de Murs).

79 Brundage, *Canon Law*, 151–52.

blood sanctions, unlike ecclesiastical authorities. At Carpentras, the judge simply rebuked and/or abjured a small number of the accused, condemned a few (sometimes with stipulations of monetary compensation), and turned only one man over to the secular arm for incarceration.[80] He ordered a few persons – and one group – to pay fines or additional compositions. Most of the accused never faced any sanction or definitive sentence (a ruling that was final, though subject to appeal). High standards of proof and the close guarding of the protections of the law kept convictions rates low. As an extension of this principle, the judge was very unlikely to sentence those who failed to appear or respond to the allegations against them. There are also hints that judicial discretion and behind-the-scenes negotiation may have been at work in seemingly unresolved cases.

In the later Middle Ages, reformers urged stricter enforcement and harsher penalties to encourage obedience to the laws. In the early Middle Ages, the Church typically moved against offenders when their offenses had become so public that they created scandal and threatened to lead others astray: at Carpentras this norm endured.[81] Early ecclesiastical authorities were content to rely on confessors to detect and punish individual sinners in the private forum of the confessional, where the goal was rehabilitation and the salvation of the soul of the sinner. As early as the end of the 11th century, popes took up the call to support more aggressive and publicly-driven approached to detection and punishment: deterrence, promoted by the example of the harsh punishment and correction, should guide the penal system, many insisted. Punishment was to strike fear into the hearts of other potential offenders.[82] The completeness of this shift, however, is contested by historians like Allison McHardy, who posits that rehabilitation remained the primary goal, rather than the principles of recompense, retribution, and deterrence which would increasingly drive the secular penal system in the early modern period.[83]

McHardy adds that the judge was expected to choose penalties that most suited the offense and the offender, but the uniformity of penalties was of lesser concern. Character, intention, and context mattered. At Carpentras, the way the court's proctors depicted sinners like the irate baker (and public

80 See details and references below.

81 Brundage, *Canon Law*, 151–52.

82 Ibid., 151–53.

83 McHardy, "Criminous Clerics," 174–79, 182–3. Records of excommunications could merit their own, separate manuals. We can find examples of this practice in one case [ADV B 3334 fol. 39v, 11 May 1487 (Fisc c. Vines)] and in the work of Collier, "Les Excommunications," 535, which examines a book recording judicial excommunication.

nuisance) who attacked the cleric in Chapter Two, or the way the judge interrogated the *concubino* magister or the rebellious canons in Chapter Three, suggests that the court weighed the character of the accused and the nature of the crime carefully. McHardy's claim appears valid here. A church court judge did not rely upon any explicit sliding scale of fines associated with the "tariff justice" commonly seen in secular statutory law, that is, the hierarchy of fines based on the severity of the crime and status of the criminal.[84] This might suggest that ecclesiastical courts instead were simply and uniquely penitential, but that assumption would be hasty and is worthy of evaluation from several angles.

In its punishments, secular courts appeared to consider character, too. It is important to note that the carefully delineated hierarchies of fines established by statutory laws were subject to negotiation and interpretation. Character, status, crime, unique circumstances, and even the desire to resolve the case and obtain a fine from the offender, all could play a role in the mathematics of justice. Justices did not always enforce fines and the condemned might not pay the full amount.[85] Clearly, there was variation in the application of fines. Carraway shows that Italian criminals who were not subject to a corporal sentence could pay less than that to which they were condemned, often 25 percent less to cancel the charges of condemnation.[86] As Sarah Blanshei notes, penalties at Perguia were adjusted according to the status of the criminal and whether he or she was *contadino*, peasants, or recividist – that is, a "criminal."[87] Furthermore, tariff justice included factors like the "maliciousness" of the act, a determination that could be reinforced by emphasizing the poor character of the accused. And, one might speculate that crimes did not always fit neatly into any of these categories of fines without narrative intervention by proctors and this, too, left latitude for judicial discretion.

Descriptions of the accused and their crimes, whether shaped by injured parties or offended authorities, served to guide the judge. As Claude Gauvard illustrates, the portraits of the criminal were blended with the narrative of the crime and both helped courts (and the public) determine whether a particular crime fit into stereotyped norms of "serious crime" and demanded redress as such.[88] These descriptions deployed easily decoded, almost formulaic, scripts that could diverge greatly from the list of "facts" listed in the accusations;

84 For an introduction to this system, see Dean, *Crime in Medieval Europe*, 130–34.

85 For a nice summary of this, see Dean, *Medieval Crime*, 130–34.

86 Carraway, "Conumtacy," 109–110.

87 Blanshei, "Criminal Justice in Medieval Perugia and Bolonga," 259–62.

88 Gauvard, *De grace especial*, 111–43; "Fear of Crime in Late Medieval France," 6–9.

this could be true in some instances at Carpentras, as was suggested in Chapter Two. How well the accused conformed to a "criminal type" played a role in his or her treatment and every proctor was likely to know that, whatever justice system he served.

We can safely speculate, though, that Carpentras' proctors and judges worked within a conceptual model similar to that which shaped the secular sliding-scales of fines. Criminal and ecclesiastical courts weighed the same elements when considering those accused of violent crimes and thefts, elements carefully indicated by the court's proctor: location, time of day, provocation, the intention of harm by those involved, the weapons used, and the severity of the damage inflicted. Descriptions of assaults often carefully noted what body parts were pulled, pushed, struck, crushed, bruised, or cut (see Chapter Two). But this cannot be finessed to translate into any simple system.

Given the paucity of sentences at Carpentras, the inconclusive endings to so many cases, and silences in the records, it is difficult to conclude definitively that the court followed the path of merciful rehabilitation and reintegration in its criminal cases, though clearly it did not prefer rigorous punishment. We rarely see any evidence of harsh sanctions, like heavy fines, prison sentences, or even many condemnations. Nor do we find the spiritual penalties of public penance and public apology to the injured party, as Wunderli found for London, Helmholz for English defamation cases, or Fosi for early modern Rome.[89] Most often, we encounter the judge of Carpentras demanding abjuration, sentencing light fines, and readily accepting concords.

Though the judge scheduled them to continue, most cases simply drop from the records without recorded resolutions. Summons may have failed, the evidence may have been poor, or the court simply never followed up. Some sort of "confession," if only the acceptance or denial of the accusations, usually was necessary to obtain a sentence, however. It is possible that certain censures or clerical purgations were conducted and recorded elsewhere as in England, but there is little compelling reason to speculate from negative evidence.[90] Why would the notary – who was commissioned to serve all the court's scribal needs – never witness and note this, especially since the accused might owe him fees (for making and copying legal instruments)? Why would he fail to mention the existence of any other book recording such actions, given that he did sometimes refer to relevant books and procedures beyond the ones he recorded? In addition to keeping records for this court, the notary served

89 Helmholz, *Select Cases on Defamation*, xl; Wunderli, London Church Courts, 50–51. Fosi, *Papal Justice*, 161–62.

90 McHardy, "Criminous Clerks," 169–73.

the bishop and official in their secular dealings and no evidence of this type of procedure has been found these, their "external" records.[91]

Could the records obscure a merciful neglect, the resort to informal settlements, or even extra-judicial pleas made to the mercy of ecclesiastical authorities? Again, though the argument from negative evidence should be discouraged and the conclusions remain speculative, they are worth exploring. As Gauvard illustrates for homicide cases, French kings grounded their political legitimacy in their role as pardoners of criminals and promoters of peace, though this model was being challenged in the 15th century. One of the potential origins of the king's right to pardon stemmed from the Church's legal system, both 'interior' (penitential) and 'exterior' (the officialities) and its hagiography. To punish *and* to pardon were both essential powers of a bishop.[92] But, if the goal was to demonstrate power and mercy, the judge or his representative would have exercised it formally and on the record.

At Carpentras, the notaries indicated when the judge suspended any cases temporarily and when the parties involved were negotiating concords out-of-court, both quite common occurrences in civil cases. Twenty-seven criminal cases ended with the formulaic phrase: "without a day [assigned]."[93] Did the judge give up? In civil cases, this notation often marked the initiation of both formal and informal negotiations (see next section, below). Vague statements could end any case, as when, for instance, the judge simply stated that a case should reach its "terminus" and the accused released. The court's proctor could reopen cases left without a day assigned to them: four suspended criminal cases were resumed on a later day (in addition to the twenty-seven cases put aside by the court). In one dropped case, a marginal note states that the notary had been paid for his services in the case, which suggests that the case was concluded. But there are few written indications that out-of-court settlements or arbitration resolved criminal matters.[94] Leaving a case without a conclusion certainly could have opened the door to out-of-court negotiations, backed by the threat of renewed legal pursuit, though such inaction may not have effectively nurtured the spiritual ideal (and penitential process) of completed reconciliations and re-integration.[95] The notary indicated that "concords"

91 See the introduction for a discussion of these records.

92 Gauvard, *De grace especial*, 904–905.

93 In Latin, "*sine die*."

94 ADV B 3334 fol. 11r, 26 January 1487 (Fisc. c. Caneneti): "*satisfactum est mihi de expensionibus in huiusmodi causa factis*."

95 These issues are discussed in Chapter Four and more fully below: settlements and arbitration were far more frequent in civil litigation.

were reached or in progress for two criminal cases (but no formal arbitration was recorded for them).[96] One involved an assault, but the substance of the other is unspecified.

Is it possible that extra-judicial remedies were just as acceptable in criminal cases as they were in civil cases? In her study of peacemaking in 13th-century Italy, Katherine Jansen describes how ordinary men and women involved in assaults and feuds used notarial instruments recognizing a peace (*pax*) among disputants, either in conjunction with, or in lieu of a secular legal case: this reconciliation was more efficient and cheaper than a full legal process and established concrete, private sanctions to the signers and their guarantors, should they break the peace again.[97] Given that public notaries were ubiquitous in Carpentras, this could have been an attractive, but legally problematic, option.

Private arbitration (and the payment of compositions to injured parties) coexisted alongside or as part of secular state justice. Given the time, cost, inconvenience, and potential humiliation of litigation, not to mention the difficulties of proving a case, arbitration could be attractive. At Carpentras, the judge appeared to favor arbitration in civil cases and here, as elsewhere in Europe, other legal officials might help guide the process. For serious crimes, like homicide, though, there was a growing preference for punishment (to deter criminals and satisfy the injured community) over reconciliation throughout Europe. This helped lead to an increasing, but very slow and uneven, resistance to private arbitration alone for acts of violence. In the late 15th-century, France struck a compromise: eager to promote the "exclusivity" of king's justice, but concerned that crimes would otherwise be left unaddressed by the royal courts, private concords were accepted as long as royal legal authorities supervised the process.[98] But in most places, and especially for crimes pettier than homicide, fines and pacts sufficed and dominated.

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96 ADV B 3334 fol. 90v, 1 October 1487 (Fisc. c. Dalphin): the notary simply wrote "*CONCORDES*." Also, fol. 4r, 15 January 1487 (Fisc. c. de Anterone): "*Comparavit Rostagni dicens partes concordes petens causam sine die remanere*." I have not found any peace concords related to these cases in the "external" records the notaries kept (see introduction and Chapter Four).

97 Katherine Jansen "Peacemaking in the Oltrarno, 1287–1297," in *Pope, Church and City: Essays in Honour of Brenda M. Bolton*, (ed.) Frances Andrews (Leiden: Brill, 2004), 342–44.

98 Blanshei, "Criminal Justice in Medieval Perugia and Bologna," Law and History Review 1:2 (1983): 256, 262. Gauvard, *De grace especial*, 20–3 (she discusses the growing pressure for severity and deterrence to take precedence over the king's mercy – a type of reconciliation on pp. 904–20); Powell, Kingship, *Law and* Society, 101–103.

According to canon law, there could be no penitential absolution without satisfaction.[99] The victim must be satisfied through public apology or money. But the court too must be satisfied in the end, through the submission to its mandates and its justice, whether in the form of fees or public penance. Helmholz suggests that private agreements could not be condoned where violence to clerics was concerned because the law was meant to protect the clerical order, not simply individual clerics. He notes that there was an inherent danger that clerics might use the courts simply to coerce satisfaction from his attacker. Private concords alone were permissible by law, though he concludes that this model might not have held in practice.[100] The evidence at Carpentras lends support to this doubt. One might speculate that facilitating a peace still served to support the honor and majesty of the bishop and his court, and may have better reconciled the parties and reintegrated the accused into the community on a practical level. Harsh discipline was not the only model from which these priestly judges – charged with the curing of souls and maintenance of peace among Christians – could draw. However, if conflicts remained truly unresolved, a claim that ecclesiastical courts served to keep the peace and promote charity is untenable.

There are hints that some form of reconciliation helped lead to the conclusion of cases, but firm conclusions remain elusive. In the case against the physician accused of grave injurious harm (in essence, malpractice) described in Chapter One, the notary entered nothing in the space he reserved for the last audience; such spaces are unusual in these particular records. It appears that the judge was satisfied not only due to the specialists' conclusion that the surgery was appropriately executed, but also due to the patient's wife request that the physician be released. For his role in a spiritual rebellion, Dominus Antoni Gayoti secured his release on the condition that he behave lawfully and honestly and showed obedience and humility to his superior, as he promised. The judge released him in consensus with the prior to whom Antoni owed that obedience (an ideally re-integrative act without the formality of an abjuration).

But most promises to mend one's way, like Antoni's, were made through a formal oath of abjuration and were responses to spiritual rebellion and/or sexual misconduct (see Chapter Three). In a broad sense, the oaths taken by the disobedient clergy were an integral part of the process of reconciliation with their superiors, though only abstractly were the sexually errant clergy reconciled with a potentially morally outraged community (rather than simply

99 Gregory IX, *Decretales* (1234) X 5.39.7 ad *satisfaciant* in *Corpus Iuris Canonici, I.* (ed.) Friedberg: "*Non valet penitencia sine satisfaction.*"

100 Helmholz, *Classical Canon Law*, 389.

reintegrated).[101] Abjuration involved a certain conceptual parsing of sin versus crime and fit the role of priest-as-judge or judge-as-confessor. As discussed in Chapter Three, the judge might use the procedure as an opportunity not only to rebuke and obtain an oath from the accused, but also to probe the intent behind, understanding of, and contrition for their actions. This served as a satisfactory form of confession, apparently, as there is no indication that the abjured was instructed to confess to his parish priest as well. In several instances, the judge adhered to Matthew's counsel and confronted sinners thrice before taking action against them. He did not sentence the abjured: the accused could be cited again later and subject to escalating sanctions.[102] Abjuration essentially "ended" the cases against nine male clerics whose cases were dropped from the records. In many cases, the sexual behavior of the abjured was the not the only – or most pressing – of their faults, and the court did not appear to actively root out sex offenders or exact exemplary punishment.[103] Unlike the sexually errant priests of early modern Rome studied by Fosi, the accused simply swore oaths in front of the judge, rather than to the general public.[104]

What if the abjured broke their oaths? Two of those rebuked for sexual offenses were the recidivist priests who simply could not stay away from the local nuns (see Chapter Three). Despite the threat of excommunication and a fine should either betray their oath (one for 15 and the other for 50 livres and a "*formidabilem*" penalty of one year in prison), both men lapsed again and faced more severe sanctions. One confessed, was fined in a short sentencing procedure, and then handed over to the secular judge Dominus Raimon Brini to deal with the matter, presumably his degradation and incarceration.[105]

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101 Six clerics were warned three times for an initial spiritual rebellion [ADV B 3334 fol. 40r, 16 May 1487 (*Preceptum factum . . . dominos canonicos de Greso*)] and then brought to court for admonishment for additional acts of defiance and for inappropriate fraternizing with women [fol. 111v, 17 December 1487 (*Nova Dominus Claudius Guiffredi prioris contra dominos . . .*)]. For the abjurations of three clerics following accusations of illicit sexual practices, see fol. 118v, 24 December 1487 (Fisc. c. Clarenci); fol. 111r–v, 17 December 1487, and again on fol. 115r, 24 December 1487 (Fisc c. de Petra); fol. 115r, 24 December 1487 (Fisc. c. Millon).

102 See Chapter Three for the details of these cases.

103 Witnesses were employed in only three cases, suggesting limited investigatory zeal. See: ADV B 3334 fol. 101v, 21 November 1488 (Fisc. c. Ybri); fol. 144v, 17 June 1487 (Fisc. c. de Murs); fol. 56r, 22 June 1487 (Fisc. c. Fachaud); and fol. 165v, 22 October 1488 (Fisc. c. Asson).

104 Fosi, *Papal Justice*, 161–62.

105 ADV B 3334 fol. 115r, 24 December 1487 (Fisc. c. Millon). Raimon held a benefice from the church of Carpentras and served as a proctor and a commissioned judge on occasion.

As if to clarify that normal punitive measures and sanctions had been exhausted in proper legal form, the judge noted that the priest "had been accused, penalized, cited, warned, excommunicated and other things done by law."[106]

Note that the judge did not his limit rebukes, warnings, or demands for oaths to the clergy, nor even to Christians. Crescas Israel, a Jew, also found himself formally warned after illicitly uttering the Latin Christian phrase "*salvo iure pluris*," an act contrary to civil statutes.[107] Crescas claimed he did not know that this was not permitted, nor did he know what the words signified. The judge gave him a thrice-fold warning and allowed him to leave.

Warnings did not always suffice: the judge formally condemned six men, all clerics, for violent attacks and economic crimes.[108] From each, he demanded the payment of legal fees, ranging from 10 to 25 livres. In these sentencing audiences, he noted that as he deliberated he was aided by the counsel of the "episcopal tribunal," composed of the judges and proctor fiscal (see Introduction). The sentences do not contain much legal reasoning and their formulaic nature can only suggest what he took into account: evidence, intention, culpability, and provocation (or lack thereof).[109] His statements suggest that he reviewed depositions and any information received (from commissions, complaints, and denunciations) and considered confessions.

The proctors of the condemned parties all requested an appeal orally immediately after the sentence was pronounced, a privilege to which all clerics were

106 ADV B 3334 fol. 129v, 14 March 1488 (Fisc. c. de Petra): "*cum penas incursus contra eundem Astorgium delatando* [sic] *penando* [sic] *multando citando monendo excommunicando et alia faciendo que iuris.*"

107 ADV B 3334 fol. 124r, 15 February 1488 (Proctors of the Curia c. Israel).

108 ADV B 3334 fol. 5r, 15 January 1487 (Fisc. c. Briac); 143r, 7 June 1488 (Fisc. c. Bosse); fol. 137v, 16 May 1488 (Fisc. c. Caneneti); fol. 45v, 25 May 1487 (Fisc. c. de Gigondas); fol. 7v–8r, 19 January 1487 (Fisc. c. Fulquet); fol. 135v, 10 May 14885 (Fisc. c. Roque). While one of them, Michael Briac, poses identification problems, he seems to have some sort of clerical status. On the day he paid his quittance, he was referred to as "*Magister Michaele Briaci sartore*"; see fol. 10v, 19 January 1487 (*Quictancia*). Later that day, in the same folio, when the court's fees were being assessed, he is called a "*dominus*," a title used for clergy in major orders (priests).

109 For example, see: ADV B 3334 fol. 45v, 25 May 1487 (Fisc. c. de Gigondas). The judge recognized the spontaneous confession but concluded that the accused committed an assault, "*nulla racionali causa*."

entitled automatically by canon law.[110] The defendant's proctor was to appear in the archdiocese of Avignon in ten days to introduce his appeal before the vicar in the curia of the metropolitan in Avignon; alternately, the appeal was to be made to Rome within two months.[111] In response to each appeal, the judge declared he did not believe in its validity, also a formulaic response. He denied only one appeal, presumably because the condemned cleric failed to appear to hear the sentence.[112]

The judge also required seven defendants to quit or compose with the court without pronouncing any recorded sentence of condemnation.[113] Their offenses and fines varied. For his ownership of a variety of falsified bulls and legal documents, one man received a purely "pecuniary sentence" to cover the costs of the court (and its functionaries) and of other courts involved.[114] Fines ("*compositiones*") paid by the accused ranged from 1 to 30 gold shields. The final composition paid by one couple accused of clandestine marriage likely reflected exceptionally large fees owed to this curia and to Avignon where they had lodged an appeal.[115] One of the errant priests frequenting the nuns also composed in order to quit himself of the condemnation and be released by the court for failing to adhere to his oath of abjuration.[116] Three men composed

110 For example, see ADV B 3334 fol. 4v, 15 January 1487 (Fisc. c. Briac): "*Achardi . . . appellavit ad sanctimissum dominum nostrum papalem dominum legatum . . . Dominus*[*vicarius*] *non credit . . . appellationionem . . . ob reverenciam diocesem ad quos appellatur eidem appellatione detulit . . . prefato Achardo appellationi si in urbe Romana duobus mensibus si vero in Avionensis huiusmodi* [word missing – damage in mss.] *causem appellationem voluit introducere decem diebus . . . assignavit.*"

111 For a detailed discussion of the appellate process: see Donahue, "Introduction to Select Cases," 59–62.

112 ADV B 3334 fol. 45v, 25 May 1487 (Fisc. c. de Gigondas).

113 ADV B 3334 fol. 55v, 22 June 1487 (Fisc. c. Clemeti); fol. 110r, 11 December 1487 (Fisc. c. Dalphin); fol. 108r, 5 December 1487 (Fisc. c. Fautin); fol. 131v, 4 April 1488 (Fisc. c. Ricard/Laudon) and (Fisc. c. Laudon); fol. 74r, 24 July 1487 (Fisc. c. Michael); fol. 129r, 10 March 1488 (Fisc. c. Millon). The case against the clandestinely married Laudon notes that there was an appeal to Avignon, for which they were required to pay fees, yet no condemnation was recorded; this slight evidence could, tentatively suggest that while marital cases might start in this curia, they were sent on to Avignon for consideration, and then remitted.

114 ADV B 3334 fol. 108r, 5 December 1487 (Fisc. c. Fautin). For the details of his alleged offenses, see Chapter Three.

115 AD B 3334, fol. 131v, 4 April 1488 (Fisc. c. Laudon and Bitrona Ricard/Laudon).

116 ADV B 3334 fol. 129r, 10 March 1487 (Fisc. c. Millon).

with the court for their violent acts.[117] It is possible that these sums could have included payments to injured parties in order to secure peace but no positive evidence can support this. Additionally, in lieu of a sentence or fine, the judge simply ordered three men to restitute of seized or stolen goods.[118]

Defendants could not be tried twice for the same offense in any court, according to the rules of double jeopardy.[119] A proctor defending a cleric, who was accused of a violent attack and pursued by the civic authorities of Carpentras, referred to the principle and demanded the court's protection of his client.[120]

Whether formally condemned or simply fined, the judge ordered that payment be made in ten or fifteen days. All but one made their payment, if not always for the full amount, to the bishop's treasurer (the *clavaire* Dionys de Stagneri) or his proctor general (Dominus Ludovic Mussi), who later acknowledged their receipt in the curia. Upon payment, their proceedings were cancelled. A proctor for the court opened new proceedings against the one man who failed to pay.[121]

In the prosecution of cases, attention to the classical canonical laws of proof and procedure, a concern for discretion, and a desire for reintegration of the accused seems to have guided the actions of those serving the court. Where sexual offenses were involved, abjuration, rather than condemnation, was the norm. Where assaults were involved, the record is mixed: many cases dropped from the records but some led to sentences of condemnation or were resolved by concords. Settlements may have been reached even without a record of negotiations and concords. In three of the cases involving serious physical assaults, while there was no record of any extra-judicial negotiation, the court did secure compositions that could obscure that.

It is difficult to compare these findings effectively to other church courts, given the modest number of extant cases at Carpentras (and the small number of recorded penalties from which to speculate), the rarity of the survival of other similar criminal ecclesiastical records that contain sentences and/or resolutions, and the fact that competency over similar cases could fall into the hands of secular courts. But, some trends can be isolated and compared.

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117 ADV B 3334 fols. 55v, 22 June 1487 (Fisc. c. Clemeti); 110v, 11 December 1487 (Fisc. c. Daniel); 74r, 24 July 1487 (Fisc. c. Michael).

118 ADV B 3334 fol. 156v, 24 August 1488 (Fisc. c. Ganter); ADV B 3334 fol. 75v, 29 July 1487 (Fisc. c. Jo. Raynard & R. Troch).

119 For a discussion of this principle, see Helmholz, *Classical Canon Law*, 284–90.

120 ADV B 3334 fol. 47r, 1 June 1487 (Fisc c. Dalphin).

121 ADV B 3334 fol. 10v, 19 January 1487 (Fisc. c. Briac).

Some elements of discipline and punishment indicate that Italian courts bear the closest resemblance to Carpentras, suggesting a loose northern versus southern European divide. Gene A. Brucker illustrates a punitive laxity in Tuscany, particularly concerning the sexual offences of priests and monks, who were routinely excommunicated and, just as routinely, quickly and easily, absolved: "light penalties and accessible procedures for their cancellation were thus the norm in ecclesiastical discipline."[122] Laxity extended to sentences for laypeople accused of sexual offenses by the civic courts of late medieval Orvieto, too, where authorities might enforce the law without extraordinary zeal or activism: most people who were sentenced were contumacious and it was not clear that there were concerted attempts to enforce those sentences.[123] Carol Lansing asserts that the laws and sentences for sex crimes at Orvieto were driven by a desire to define a certain *vita civile* in which concupiscence and unrestrained sexuality posed a threat to social order, but the desire for the rigorous pursuit and harsh punishment of offenders was secondary.[124] Again, we return to the idea that the justice system could have limited its role in maintaining a moral social order to defining norms and isolating examples of poor behavior.

But compared to most courts, the relative absence of criminal fines at Carpentras is especially notable. We cannot assume that these trends were continuations of specifically *local or regional* tendencies, given Chiffoleau's findings. He explained how temporal and spiritual courts in papally-controlled Avignon deployed fines for all offenses, including moral ones.[125] His statistics on imprisonment do not include those imprisoned for sexual and moral offenses, however, which may suggest that incarceration was rarely deployed for such offenses. But, in all areas of sentencing, he found that the officiality at Avignon tended to inflict *higher* fines than the temporal court, particularly where morality and sexuality were at issue, though fewer corporal penalties. Adultery was the most severely penalized sexual offense (with penalties ranging from 30s. to 48s. in the temporal courts to sums as high as 235s. in the officiality).[126] As in the temporal courts, the officiality exercised degrees of clemency based upon a hierarchy of fines.

Looking outside the region, the contrast is even greater. The reliance on fines as judicial penalties was common to secular courts throughout Europe

122 Brucker, "Ecclesiastical Courts," 241–42.

123 Lansing, "Gender and Civic Authority," 48–49.

124 Ibid.

125 Chiffoleau, *Les justices du pape*, 218–19, 230–31.

126 Ibid., 218.

(though sometimes homicide was excluded).[127] In both Lyon's temporal and spiritual courts, judges also favored monetary penalties.[128] Just as Chiffoleau found, among sex crimes, adultery figured most prominently in the records of amends.[129] Fines might have been the norm, then. But the evidence most sharply contrasts with church courts in England, where Brundage found that most of the accused were found guilty and, while most simply had to pay fines as well as court costs, some were ritually humiliated.[130]

So, the relative lack of fines in 15th-century Carpentras seems surprising, and in part, may reflect the small number of completed cases. One might speculate that low conviction rates and the rarity of incarceration also reflected this court's unwillingness to humiliate clergy and desire to protect its own interests and members (though courts at early modern papal Rome had no such qualms). Again, though, there is a problem here of comparing like with like and the nature of the record. In the one incident involving a lay clandestine marriage at Carpentras, in which proper marital formation was at stake, the court did sentence and fine the couple, as one would expect based upon findings elsewhere, and compositions may have included fines, as well as legal fees.

5.5 Comparison with the Punishment and Resolutions in Civil Litigation: the Evidence from Debt Cases

Definitive endings were more common in civil suits than in criminal ones, though less than half of the civil suits reached a ruling. Debt litigation, the focus of the previous chapter, was the most common type of case and the most amenable to quantification and comparison, as well as the most likely to lead to resolutions, and therefore will be the focus here, too. The judge (again, typically the official himself) made a judicial sentence against the plaintiff (on pain of excommunication) in only 18 percent of the cases, and most of these rulings, in turn, were based on the admission of the debtor (11 percent

127 For a summary of this trend throughout Europe, see Dean, *Crime in Medieval Europe*, 130–34.

128 Gonthier, *Déliquance, justice et société*, 228–40. Relatively low fines were incurred for acts of violence as well; however, the highest fines were meted out for violence among family members (idem, 232). She notes, too, that recidivism did not necessarily lead to augmented fines.

129 Chiffoleau, *Les justices du pape*, 176.

130 Brundage, "Playing by the Rules," 33.

of debt cases). Other cases ended when the judge ordered mandaments or letters demanding repayment for the creditor (both could result in renewed legal disputes). Rulings were rare because evidence often was weak (or lacking), and without a confession, the judge appeared reluctant to rule, much as Brucker found for 15th-century Tuscany, where cases were handled quickly when debtors confessed, ended if they resisted, and often went into arbitration.[131] At Carpentras, when defendants or their proctors failed to appear, or when summons seemed ineffective, the judge usually granted to the plaintiff an order to pay (15 percent). The judge used coercive measures to obtain payment against insolvent debtors in only two cases, and both men accepted his decision at a second hearing: for one, he ordered the seizure of goods up to the value of the debt, and for the other, incarceration.[132] Incarceration as a substitute for fines was common in secular criminal and civil cases in general.[133] The relative lack of punitive measures starkly contrasts to secular courts, however. The judge liberally granted requests for delayed payment to those who were temporarily insolvent, particularly those awaiting the end of harvest or business cycle.[134] The judge also regularly delayed deadlines by scheduling them after lengthy devotional periods, or by the next feast-day.[135] Other delays responded to the various challenges of business and agriculture.

One common "ending" for a case was the initiation of an out-of-court settlement. Only rarely did the parties who entered into negotiations return later. The notary indicated the resort to extra-judicial action with a note that no further hearings were assigned because peace negotiations were in progress (and, as such, litigants could resume the case before the court). The speed and efficacy of this alternative no doubt was attractive, but a creditor might have chosen this option for the convenience (and possibly local publicity) of settling debts in their hometowns.[136] Private negotiations left no trace in the records except in the rare instances in which the court facilitated formal arbitration; typically this occurred only in complicated possessory and inheritance disputes rather than debt litigation (see Chapter Four). Arbitrators

131 Brucker, "Ecclesiastical Courts," 251.

132 ADV B 3333, fols. 199v, 27 August 1486 (Ponci c. Malanali) and 179v, 6 July 1487 (Sanctus c. Perussi), respectively.

133 A. Porteau-Bitker, "L'emprisonnement dans le droit laique du Moyen Age du XIV et XV siècle," *Revue Historique de France*, 389–405.

134 For example, see: ADV B 3333, fol. 76v, 9 September 1486 (Langeri c. Bonard).

135 ADV B 3333, fol. 18v, 6 March 1486 (Bonoti c. Moreli).

136 ADV B 3333, fol. 127v, 2 December 1487 (Marcelli c. Albarusso). In October, a concord was made in neighboring Caromb.

included members of the ecclesiastical and secular court system, proctors, and prominent citizens. After arbitration, participants returned for the notary to record the terms. In such cases, the judge threatened to censure the offending party and re-open the case should a party default on the terms. Negotiated pacts represented a flexible alternative to potentially protracted legal cases and the fees and irritation associated with them. In 16 percent of *all* civil cases, the record ends with a notation that the parties were in peace negotiations; only about 20 percent of these indicate that a concord was reached or formal arbitration occurred.

In the margins of the daily entries for debt litigation specifically, the notary recorded sporadically that the defendant made a payment. Unfortunately, in many cases it is not clear whether payments covered court fees or the debts themselves. Sometimes the notary recorded that debts were paid on time and in full (and sometimes stated the amount) or that defendants were now absolved.[137] Judicial resolutions did not guarantee payment by the losing party. People returned to recover legal expenses and/or payments mandated by legal orders, sentences, arbitration, or concords left unfulfilled.[138]

5.6 Conclusion

In sum, in civil litigation the judge was not quick to rule summarily and most often ordered debtors to pay only if they failed to appear. He seemed to prefer that litigants confess or confront the issue, or choose to resolve their cases in out-of-court settlements (at a minimum, they allowed cases to end so without prejudice). The winners of rulings were as diverse as the litigants themselves. A fairly low level of judicial activism reflects the court's attention to the high evidentiary requirements of civil cases. Creditors with weak evidence may have preferred to use this court to pressure their opponents to confess or settle, or assumed that the debtor would not appear (leading, potentially, to a summary ruling or court order) or simply desired to create a record of the debt.

So, how do we understand these findings and their relationship to those of the criminal court? On the one hand, one can simply label this as a weak court,

137 ADV B 3333, fols. 132 v, 1 March 1487 (Guichard c. Codrassi) and 241r, 11 July 1487 (Bernard c. Raynelli).

138 Cases over these newly made "circumstantial debts" (those debts incurred not through a loan, but rather due to unpaid legal fees) were not included in the calculation of "debt cases" here. The notary carefully labeled these types of cases over legal fees. For example, see: ADV B 3333, fol. 56r, 15 July 1486 (Sayni c. Cioste).

but again that raises the questions of what its goals were, and in civil suits, why people bothered to go to court in the first place. Could we see the court's approach, with its soft pressure, mediation, and registration, as something beneficial or desirable? Donahue speculates that sentences were uncommon at Canterbury because the Church encouraged litigants to make settlements or compositions and hoped to restore peace between them.[139] Those in litigation were outside of a charitable state of peaceful relations and, one could say, therefore courted further conflict, especially as local knowledge of the case could spread. Gauvard and Smail stress, too, that litigation could rupture the social bonds created by debt exchange, leading to public anger and humiliation; Gauvard draws attention to the tendency of judges in French and German regions to accept private accords in both criminal and civil cases.[140] And given the social diversity of litigants, the peace or discord at stake was one that encompassed people from most walks of life. Furthermore, it is possible that a creditor might not want to appear too vicious or unaccommodating to his neighbors. Shatzmiller's work suggests that the Jewish creditor Bondavid de Draguignan clearly understood the value of a benevolent reputation and chose witnesses who could illustrate his generosity towards poor but respectable debtors.[141] Choosing to litigate in a particular court meant choosing potential sanctions and paths to resolution and peaceable future interaction.

The role Carpentras' church court played in debt conflicts in some ways resembles recent studies for secular courts in France, particularly those produced by a workgroup led by Julie Claustre.[142] Just as this group demonstrates for secular courts, the regulatory role of the court at Carpentras was multivalent: it authenticated debts, mediated disputes over contracts, facilitated expert testimony, and managed arbitration. But rarely did its judge resort to draconian coercion, make summary rulings, or sentence debtors without their confession.

We also find a similar judicial approach in 15th-century ecclesiastical tribunals in Provence and Italy.[143] In his study of Grasse, a town in Provence,

139 Donahue, "Introduction to Select Cases," 55–56.

140 Gauvard, "Conclusion," in *La dette et le juge*, 190–93; Smail, *Consumption of Justice*, 148–50.

141 Shatzmiller, *Shylock Reconsidered*, 35–40. 112–118.

142 Claustre, "Introduction," 10–14. A similar role of the royal courts in registering debt is well demonstrated by Fianu, though she asserts that royal acts and rulings carried more weight than those of officialities in "Enregistrer la dette", 138–39. See also: Antoni Furió, "Crédit, endettement et justice: preteurs et débiteurs devant le juge dans le royaume de Valence (XIII^{e}–XV^{e})," in *La dette et le juge*, 35–48.

143 Philippe Wolff, *Commerces et marchands de Toulouse* (*vers 1350–vers 1450*) (Paris: Plon, 1954), 372–75; Paul-Louis Malausséna, *La vie en Provence*, 228–29.

Paul-Louis Malausséna concludes that the sanction of excommunication (debatably a weaker sanction than those available in secular courts, but a strong one in a church court) and extra-judicial settlements were the most common conclusions to litigation.[144] According to Brucker, Renaissance Italian church courts cases often ended quickly and definitively: once debtors appeared, they usually promised to pay their obligations. There, excommunication was an effective coercion. He supports his conclusions with compelling anecdotes and examples of lesser-known contemporary commentary on church courts, including a letter by Pope Nicholas V, who indicated that a particular prior of a monastery could only recover his loans from clerics and laypeople under threat of excommunication.[145]

It may seem unusual to conclude that the church courts could be useful: partially, this is a matter of interpretation, though the findings may be unique to this region or reflect the nature of the documents. Wunderli, for instance, notes that in early 16th-century London, the sources do not indicate how judges ruled; based on the evidence available, he concludes that creditors were dissatisfied and preferred civic authorities except to collect small loads made by oral promises.[146] But small loans were part of the fabric of any local economy. By looking at how cases are resolved at Carpentras, we can speculate that a wide variety of creditors sought not only censures, but a method to register their debts and prompt negotiations (if only to save on court costs).

Can we speculate on a set of norms, or a rough judicial philosophy, guiding civil litigation? As with criminal cases, the judge and other legal functionaries respected long-established canonical procedures and protections. Though rulings were made in less than half the cases, the court did facilitate confrontations, leading to a significant rate of confessions, condemnations and negotiations, and therefore could be considered effective and valuable in this sense. The judge rarely ruled summarily *as long as the defendant* appeared and often was content to allow litigants to resolve their disputes themselves. Criticisms of the court's weak sanctions may be justified, but perhaps we should think of its practices as ones geared to pressure litigants, provide the registration of debts, and to encourage mediation between litigants, rather than to repress. Judges followed one model promoted by jurists, a model that expected judges to act compassionately, promote reconciliation, restore charitable relationships among its flock, and foster the public peace. Mending relationships may have been especially attractive in a small, fractious and diverse

144 Malausséna, *La vie en Provence*, 224–28.

145 Brucker, "Ecclesiastical Courts," 250–51.

146 Wunderli, *London Church Courts*, 105–107.

diocese. While such an approach limited the judges and their court to a modest regulatory role, that role meant addressing disputes across the social spectrum and the diocese, thereby establishing the court as a part of the system of local credit and collection.

Lenders tacitly accepted this role by using this court (and, for a subset of creditors, on multiple occasions) and rarely returned to enforce any of the penalties threatened by the court. Enduring, socio-economic relationships could have been at stake in debt and contract disputes. Local creditors may not have desired coercive, repressive tactics that could risk these relationships. As Shatzmiller has suggested for Jewish lenders, ensuring good will was part of good, safe business. This court could fulfill that need well by managing and reaffirming a relationship with every negotiated settlement. As we have seen, keeping peace, particularly among Christians and Jews, was a challenge for the court. Through its approach to civil cases, the court embedded itself into the culture of lending, rather than created a sharply distinct punitive space. In both civil and criminal cases, judges were content to be involved and to track, and sometimes address, problems with cautious coercion and guidance, either due to the strict limitations created by those who shaped this legal system or the judicial norms and goals the judges themselves held.

In both the criminal and civil sphere, the court preserved its competency, recorded disputes, and, when feasible, made some effort at admonishment, mediation, and reintegration. The judges used few of the coercive aids and punishments available: most erring litigants even avoided excommunication or preventative incarceration. Summary rulings were few and did not include definitive sentences that demanded a formal appeal. This was especially true of criminal cases, where few were sentenced and fined, and only one faced jail (a cleric who was remitted to a secular court for this purpose, reinforcing the impression that incarceration was an abnormal sentence). Even in civil proceedings, imprisonment was an option only to which insolvent debtors submitted.

While we are limited by the number of criminal cases and the reticence of the records, which neither explains the reasoning for most rulings or how quittances were determined, we can make a few tentative conclusions. Many offenders were contumacious and quietly neglected, but the most heinous, notorious, violent, and disruptive offenders were brought to court. Such were the cases most likely to be judicable. In court, these same persons appeared likely to confess, at least in part, and the criminal judge could – and often did – sentence and fine them for their acts of violence or abjure them for their disobedience and sexual misdeeds. The court appeared reluctant to mete out harsh justice or humiliation to either group of offenders, and the record

cannot be coerced or finessed in order to tell us whether this stemmed from the prevalent judicial philosophy, an adherence to the county's well-developed status quo, or a desire to protect the clergy (a general procedural scrupulousness and caution applied to all participants). In both types of litigation, excommunication and custodial holding were often avoidable.

The court could track offenders, indicate when the boundaries of acceptable behavior was violated, and, by pursuing a case, demonstrate its moral approbation to the public. While there are indications that the court was keen to return the participants from a divisive, contentious legal space into some sort of peaceable, licit space in the community, that may not have been an attainable goal in many cases, given the problems associated with contumacy and the requirements of Roman-canon law. With its concerns for clerical privilege and the preservation of many of the safeguards the latter provided, definitive rulings were hard to reach. As demonstrated above, the court shared challenges and approaches to justice with both ecclesiastical and secular courts, particularly southern ones, if we compare its high contumacy rates and low conviction rates and its preference for fines and payments over corporal punishments, and, more tentatively, its use of preventative incarceration.

Conclusion

In the late 15th century, the diocesan court at Carpentras functioned within a modest niche of the Comtat's well-developed, delimited, and unified legal system. Some elements of its regulatory sphere were unusually broad, while others were circumscribed. This court articulated through its actions the boundaries of the licit, played a role – however limited – in the moral regulation of the community, and continued to support the culture of archiving and surveillance begun under the popes (one that surveilled but also, presumably, could be itself surveilled by superiors). It continued to follow similar patterns in criminal justice established in the early 14th through early fifteenth centuries in the region, patterns so well-explicated by Jacques Chiffoleau. Its justice was not swift, certain, nor even particularly penitential, in part due to its tendency to favor the protections of its defendants.

While the court's functionaries confronted the most egregious criminal acts with vigor, the sitting judge applied sanctions gingerly. The court's primary concerns were acts of violence, disobedience, and sexual misbehavior committed by clerics, who defended their actions cleverly in the courtroom. During the trial, the judge was slow to excommunicate the contumacious, granted delays liberally, and released those under arrest upon the presentation of a surety guaranteeing their return. Sentences, typically reached only when the accused confessed, led to fines but rarely incarceration. While the judge did fine violent offenders, they abjured first offenders for sexual misbehavior and disobedience. The court was one which normally prioritized the rights of defendants – particularly clerical privilege – and high standards of proof rather than certain, swift, or harsh punishment. When crimes were particularly scandalous and the offenders were recidivists or acting in groups, the court's functionaries took the greatest care and the judge meted out the severest of his sanctions. The court interrogated, recorded, monitored, intervened, and mediated, but it rarely punished severely and favored fines over prison or corporal punishment. This is not atypical of medieval justice. In a state run by clergy, confining clerical offenders to these courts could have been politically useful and in some instances, may have denied potentially incendiary and expanding local disputes wider platforms for redress and escalation.

This study has also shown that the court's civil forum, while lacking the marital disputes common to officialities, adjudicated a wide variety of debt and contract disputes, and the profile of the litigants who brought these cases to it was socially inclusive. As with the criminal cases, here again, the court primarily monitored and registered disputes, authenticated evidence and

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documentation, and, with a light hand, sanctioned parties. If defendants failed to appear, the official, as sitting, judge, resorted to court orders that could be challenged in the officiality later, rather than make rulings with definitive sentences. Comtadines had a right to adjudicate most contracts in all of its courts but continued to choose this one even when competency *per personam* did not dictate jurisdiction, particularly for oral contracts. Creditors may have valued the court's ability to collect, validate, legitimize, and archive the information, as well as the pressure it could place on parties to reach an accord – if only to avoid the further nuisance of court audiences, the threat of excommunication, and the publicity and potential embarrassment of court proceedings. Perhaps, too, redressing broken contracts here was an option chosen by those who did not want to antagonize those they sued with the threat of harsh reprisals.

The court remained a vital part of the local legal and economic fabric and reinforced the jurisdictional boundaries and organization of the Comtat's governance that papal administrators so carefully had constructed in the 13th and 14th century. The judicial structure of the county would not change dramatically in the early modern period. Could we see all this as testament to the lasting resilience and efficacy of papal legal restructuring of the Comtat? From a modern perspective, some might see this one as a weak system in stagnation and wonder at the lack of signs of the disciplinary regimes to come. While we should not ignore the limits of its justice, we might be better served by trying to understand it within comparative frameworks that are more relevant, situating it within our understanding of late medieval secular justice (discussed earlier), the evolution of the papal state, 15th-century religion, and, finally, the general findings for ecclesiastical courts.

A few elements of Irene Fosi's conclusions about justice in the Italian papal state provide instructive points of comparison. The papal state evolved over the early modern period as popes attempted to simplify its judicial structure (uniting it was a dream soon abandoned), but a great multiplicity of jurisdictions with competing competencies remained. While the powers of centralized authorities were enhanced and the overall judicial structure was subject to sometimes zealous revision, logistical problems undermined the practice of effective, equitable justice, as did the vagaries of staffing, which could lead to a personalized justice that could vary in quality and veer dramatically between punishment and forgiveness, two of the foundations of sovereign power. Ultimately, compromises among local, private, and centralized courts were made that balanced the protection of papal authority with a respect for local customs, conditions, and privileges in order to maintain a workable public order and governable state.[1]

1 Fosi, *Papal Justice*, 3–39.

How attractive must have been the relatively streamlined simplicity, order, and set routine of the Comtat's justice? Its earlier wave of reform appears to have created a sustainable and primarily cooperative model, a conclusion that the findings for the officiality reinforce further. Fosi suggests that the multiplicity of courts in Rome, while potentially chaotic, may have had a useful function. While Romans could criticize the local, personal, or exceptional courts (and the personalities of its functionaries) as corrupt or weak or confusing, they perhaps imagined that the pope's own justice, nearer to his seat of power, was better and more equitable.[2] To go a bit out on a speculative limb, perhaps the Comtadines, too, could criticize the partiality or weakness of justice in the officiality, yet imagine that higher authorities, like the rector, remained equitable and available to remedy abuses. Laity and clergy alike could and did seek out the rector's justice when they found that of the officiality lacking, unjust, or over-reaching. When affairs became particularly public and competencies contentious, the rector, who oversaw all Comtadine justice, could intervene personally. When he did, he typically reinforced pre-established judicial boundaries. Surely this allowed him to remain somewhat aloof from petty conflicts (or petty functionaries) while supporting his role as the final voice in judicial matters. The weekly tribunal held by the rector (along with the proctor fiscal and judges-major) weighed the proposed judgments of Comtadine courts, including the officiality, and in this sense, the rector *did* shoulder part of the responsibility for the officiality's sentences. As the Comtat's head of financial, administrative, and judicial affairs, he and his men were to assure that each organ performed the tasks assigned to it.

From another vantage point still, we might conclude that the officiality not only played a relatively limited role in its part of maintaining public order – an aspect of good governance – but also failed to fulfill the promise suggested by its earlier penitential roots. Most of the criminal processes do not proceed through a fuller path of confession, penitential suffering, satisfaction, absolution, communion, and reintegration. The judges' and staff's complacent encouragement of private settlements, particularly in civil cases, served to reduce immediate legal conflict, but did little to ensure that settlements actually were reached. The judge facilitated, but did not insist upon, formal arbitration, nor did the court demand that parties return to court to prove that peace agreements were reached, a demand that also would have reinforced the court's power in validating and reinforcing the terms of the agreement.

At Carpentras, we may simply see a quiet continuation of a status quo built by a regulatory order that served this small polity, balanced multiple functions, and might have seemed just in the eyes of those who maintained it. The

2 Ibid., 26, 34.

process of oversight and discipline was very much a *process*, and perhaps lacked a strong motivation to reach a discrete endpoint. There may been reasons to avoid endpoints like punitive sentences that fostered strife and contention in civil cases or attacked notions of clerical dignity in criminal ones. It is certainly possible that local pressures to curtail the vices of the clergy or laity may not have been great. Ultimately, the court and county carefully protected its clergy, unsurprising in territory run by clergy. By way of comparison, in early modern Rome, the clergy were subject to exemplary punishments, but this helped mask often ineffective moral policing, as well as the lenience and protections routinely shown to the clergy, who continued to demonstrate the faults of their medieval counterparts at Carpentras.[3] The nature of that moral policing was an essential question of the Reformation and Counter-Reformation.

How does this study, situated on the "eve of Reformation," inform our understanding of the late 15th century, a period so often depicted as transitional and rife with the religious problems and discontent leading to reformist drives and growing confessional divides? A major part of this discontent targeted the clergy. Anti-clerical diatribes and satires from lay and ecclesiastics were ubiquitous and were lent a new impetus and bite by the development of Renaissance humanism and the printing press. The clerics facing justice at Carpentras may have merited similar critique, and from the radical reformers' perspective, certainly derision and disdain. But these critiques were not necessarily new, nor revolutionary. Nor were the defects of the clergy the only root of the complex set of events associated with reformist drives. Jean Delumeau notes that the laity recognized both their own sins and those of the clergy, but asserts that the immoral behavior of the clergy was not what led to the Reformation: it was the Church's failure to provide adequate pastoral care, especially the proper performance of the religious rites.[4] Reformation scholar Euan Cameron argues that the late medieval Church took on too many tasks and pursued conflicting goals, leading to critiques of the inadequacy of its pastoral care, personnel, and institutions.[5] This conclusion, in turn, then guides us to the jobs that the Church performed and was expected to do, and that leads us back to the court itself.

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3 Ibid., 39–39, 155–76.

4 Jean Delumeau, *Catholicism between Luther and Voltaire* (London: Burns and Oates, 1977), 156.

5 Euan Cameron, *The European Reformation* (Oxford and New York: Oxford University Press, 1991), 20–37.

The competency of the Church's court system was potentially vast and fraught with conflicting goals. It juggled the objectives of justice, mercy, penitence, and the protection of its members and property. But, its many broader services may have also kept it relevant to people's needs, as could be seen in its civil cases at Carpentras. Just as certainly at Carpentras, conflicting goals limited the court's regulation of a clerical population that engaged in very public, scandalous criminality. The court addressed only the most egregious offenders and then hardly performed the fullest penitential justice possible (though, the majority of laypeople might have been satisfied by the soft justice meted out to those who attacked Jews, given the interreligious climate of the period). Could this warrant or foster the sort of virulent anti-clericalism that could significantly undermine the Church's hegemony?

In his work on England, Robert N. Swanson subverts the assumption that late medieval complaints against the clergy should be understood properly as a new, destructive "anti-clericalism."[6] The clergy was always in need of reform in all periods and regions because it seemed always to be in "decay." When people vented their irritation though anti-clericalism, they took part in a disciplinary process that expressed how people wished the clergy to behave and that advocated for the correction of abuses. Accusations made in church courts or during visitations aimed at the reprimand and amendment of recalcitrant clerics. What the laity wanted from their priests was spiritual guidance, sacerdotal services, and decent examples (i.e., a well-behaved, disciplined clergy that was a force for peace in the community and who lived up to the status of their order).[7] In the officiality of Carpentras, we do not see a large number of complaints for sacerdotal failures, but we do see some concern to combat bad public examples set by the clergy. We do see that a process was in place to allow redress and potentially respond to reformist drives, though perhaps not with much zeal on the court's end.

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6 Robert N. Swanson, *Religion and Devotion c. 1215–1515.* Cambridge: Cambridge University Press, 1995), 246–248. The laity was sensitive to ills within the Church, such as easily-granted indulgences. On the other hand, Swanson stresses that the laity adapted in England: they developed new devotional practices and forged partnerships outside the ordinary administrative control of the Church with local priests to meet their spiritual needs effectively. They could favor priests who were upright and met their needs, but in turn, were dependent on the sacerdotal authority these priests wielded. Hence, the laity could become as responsible for checking the behavior of priests as the Church. In a sense, then, the Church's discipline was secondary to the more spiritually-inclined laypeople who sought additional services from their priest.

7 Ibid., 242.

From the records at Carpentras, we can isolate what authorities considered the most acute, actionable moral problems. Unruly clerics were the main disciplinary targets of criminal suits, particularly when their violence, questionable speech acts, sexual misconduct, or thefts were committed in public or publicized. Throughout European court records such stories of clerics committing acts of insubordination, debauchery, concubinage, theft, and violence were common, and so the accusations at Carpentras were not unusual in nature beyond the interreligious quarrels that the court confronted. Clergymen were deeply entrenched in the local economy and disputes. Because the court responded only to what were likely exceptional, socially disruptive, or well-publicized offenses, one is left wondering whether court records reflect the scope or pervasiveness of clerical misbehavior and whether minor sexual offenses were seen as something worth formal legal redress in the eyes of the court or the public at large. Would the court have heard cases like the concubinage of Magister Clarenci had he not been in a protracted fight with other men in his neighborhood? Would the judge have reproached the spiritually rebelling canons had their misbehaviors not extended into the streets and the bars? To an ecclesiastical court, crimes are sins that not only are actionable but also visible and upsetting.

Was Carpentras' regulation unusual? With cases concerning violence and disobedience predominating over sexual misdeeds, the criminal caseload (and its relative proportions of types of accusations) contrasts with those typically found for northern Europe, with the exception of the archidiaconal court of Paris and the bishop's court of Bayeaux.[8] In part, limitations in the sample size and the nature of reportage may have helped determine this: unlike England and Italy, there is no evidence here that laypeople played much of a role in initiating cases, though as stated previously the *ex officio* process can hide this from our view. Though the majority of English cases pertained to lay sexual behavior as in Canterbury, Richard Helmholz draws our attention to the significant number of *ex officio* accusations against the clergy for their failures to uphold their spiritual obligations (ministerial duties, financial oversight, and residency) and to maintain proper moral conduct (sexual behavior and

8 See the Introduction for a discussion of these trends and the comparative caseloads of the ecclesiastical courts, as well as the references to the wider corpus of texts. For Paris, see: Pommeray, *L'officialité archdiaconale de Paris*, 223–2. For Bayeaux, Neveux finds that in the 15th-century bishop's court accusations of thefts, murders, violence and fraud were most commonly alleged to the clergy and religious crimes to the laity, including "superstition" and magic ("*Les marginaux*," 30).

drinking habits).[9] Ralph Houlbrooke notes that in the 16th century, too, the discipline of clergy was a matter for both archidiaconal and diocesan courts.[10] For most northern bishops and archbishops, marital litigation and quarrels over ecclesiastical finances were especially numerous, particularly on the appellate level: so, we could think of the officiality of Carpentras as one that did a similar job as the lower ecclesiastical courts in other regions.[11] But as the diocesan studies above indicate, sexual infractions simply might not have been a great disciplinary concern in several regions of neighboring France, too.

The relative paucity of cases concerning illicit sexual activity, and higher number of accusations for assault, also may reflect a regional or southern European trend. For Avignon and the Comtat, Chiffoleau finds that the bishop of Avignon's regulation of sexuality targeted primarily adultery and, to a minor extent, concubinage and bigamy (two accusations we do see at Carpentras in our period).[12] Only 2 to 3 percent of the caseload of all the courts under Avignon's jurisdiction address sexual offenses, and he concludes that the court was lenient towards them. Paul Ourliac similarly depicts a flexible, lax juridical attitude at Avignon in general, one which was characterized by a willingness to recognize the legitimacy of *de facto* marriages between couples who consummated and shared lives but did not receive sacraments nor publish the bans.[13] He finds that clandestine marriage cases were lacking in the judicial registers – as well as most other types of cases relating to marriage formation – and cases concerning concubinage were rare. For Fréjus, in southeast France, Andrée Courtemanche discovered that the 14th-century episcopal court was not especially concerned with sexual offenses, clerical or lay. In his sentences, the bishop most often condemned acts of physical or verbal aggression and theft (just as at Carpentras, here).[14] Under the bishop's secular jurisdiction, lay offenders were accused only when they jeopardized marriage, family, or the public order.[15] The attitude towards extra-marital sex, particularly of young

9 Helmholz, "Clerical Discipline," 192–95.

10 Ralph Houlbrooke, *Church Courts and the People during the English Reformation, 1520–1570* (Oxford: Oxford University Press, 1979), 173.

11 Donahue, "Stubbs v. Maitland," 657–70.

12 Chiffoleau, *Les justices du Pape*, 175–82.

13 M. Paul Ourliac, "Notes sur le mariage à Avignon au XV^{e} siècle," *Recueil de mémoires et travaux publié par la Société d'Histoire du Droit et des Institutions des Anciens Pays de Droit Ecrit.* Vol. 1. Montpellier, 1948, 55–61. *Recueil de mémoires et travaux publié par la Société d'Histoire du Droit et des Institutions des Anciens Pays de Droit Ecrit*, vol. 1 (Montpellier, 1948), 55–61.

14 Courtemanche, "Morale sexuelle," 353–56.

15 Ibid., 348.

laymen, was tolerant. But it is equally important to note that secular courts assumed competency over lay sexual regulation here: throughout Europe and certainly in nearby France, secular courts increasingly, and sometimes vigorously, addressed lay sexuality themselves.

The caseload at Carpentras bears great resemblance to Tuscany, where the officialities primarily regulated clerical sexuality and fulfillment of religious duties, as well as a wide variety of debt contracts, but shared a similar disinterest in pursuing lay sexual and marital misbehavior. In his study of the 15th-century diocesan and archiepiscopal courts of Florence and Fiesole, Gene A. Brucker found accusations for a wide range of clerical malfeasance, most typically for alleged adultery, gambling, drunkenness, and failure to perform their religious services and meet residency requirements.[16] He uncovers only a "miniscule" number of cases of marital litigation of any kind and a reluctance of the court itself to intervene in marital affairs or to assert anything more than a passive role in monitoring sexual and marital relations.[17] The Church played a marginal role in marriage; notaries rather than priests officiated at the formal exchange of rings and vows. He found no cases of fornication, adultery, or sodomy involving the laity.[18] He adds that secular authorities, instead, increasingly intruded on the regulation of marriage. The shared notarial culture of Italy and the Midi – a culture shaped by a group of notarial professionals regulated by the Church, but outside its sacerdotal sphere – may prove to be a significant determinant in shaping the boundaries of the Church's regulation of the laity's marital lives. However, one could just as easily assert that shared patterns of agnatic, extended familial structure in Carpentras and Tuscany may be an equally crucial determinant: families might have played an especially strong role in regulating marriage in both areas.

The ecclesiastical hierarchy may be a determining factor in shaping the caseload, as well: many matters might not have been troubling enough to reach the officiality's attention. Robert Brentano notes that in 13th-century Italy minor offenses were under the purview of abbots, archpriests (men usually attached to collegial churches), and archdeacons, rather than the bishop or his vicar general. With the consent of the archdeacon, it was typically the job of the archpriest to correct and excommunicate errant clerks; while he could

16 Brucker, "Ecclesiastical Courts," 236–37.

17 Brucker, "Ecclesiastical Courts," 243–47. Richard C. Trexler finds that laypeople were most likely to be brought before the court for usurious contracts; thus, their interaction with the court was primarily in civil suits. See *Synodal Law in Florence and Fiesole 1306–1518*, Studi e Testi 268 (Vatican: Biblioteca Apostalica Vaticana, 1971), 145–46.

18 Brucker, "Ecclesiastical Courts," 245–46.

not arrest them or seize their benefice, he could suspend them from office.[19] In San Germano, as Brentano explains, grave offenses might be referred to abbots; these included notorious concubinage, usury, unnecessary wandering at night, carrying arms, public drinking, fighting, gaming, and a variety of disputes over personal property.[20] The abbot tasked the archpriest with hearing marriage cases, though the latter had to consult with the former before he rendered a definitive sentence. Some dioceses may have continued to divide their labors. Frankforter also suggests that routine disciplinary issues like residency enforcement and clerical concubinage were delegated to the archdeacons in England, who referred only intractable problems to the bishop.[21]

In practice, at Carpentras, the officiality's main job was to mediate contract disputes and to police and protect the clergy. Here, the church courts may have retained a certain vitality and utility in the maintenance of public order and regulation of the economy, if a modest one. Still, courts like this could merit the sorts of critiques typically aimed at church courts. The person and dignity of clerics were privileged by the court, which protected them even when accused parties were embroiled in actions – and engaging in narrative descriptions of actions – ill-befitting their clerical status.

We easily can understand the critics of, and frustrations with, the Church's courts, but in the end notarial records like these are not apologies but records of the nuts and bolts of the court's activities on a daily basis, and as such tell us above all about the roles and duties of the court and its staff. From them, we can speculate about the courts' priorities, goals, and judicial philosophy, as well as illustrate the narrative practices in the court and its documentation. Legal officials did their job with care: their roles were shaped by the rules of canon law, a little-contested and limited functional jurisdictional structure, the nature of reportage, and, perhaps, custom. In criminal cases at Carpentras, that role appears to have been circumscribed, while its role over debt was broad. Its legal space was deeply embedded in the small but tumultuous world of local justice, local quarrels, and local economic relations. In that space, forensic, confessional, archival, and mediatory roles comingled. Confrontation, recording, tracking, admonishment, and to a lesser extent mediation, peacemaking,

19 Robert Brentano, *Two Churches: England and Italy in the Thirteenth Century* (Berkeley: University of California Press, 1988), 74.

20 Ibid., 74–74.

21 Frankforter, "The Reformation and the Register," 211, 213. Studies of some English lower courts support this assertion, too. Patricia Cullum notes that in the Dean and Chapter of Minster – which heard a wide variety of cases – most clerical cases dealt with sexual misconduct and some with violence ("Clergy, Masculinity and Transgression," 186–90).

and reintegration, were goals of the court. In his ministrations, the judge differentiated sexual sins from violent crimes, and the minor offenders from those who were unusually violent, socially disruptive, and recidivist. While cases routinely stalled, were allowed to drop from the records, or received little attention, the judge treated those involving public scandals and expanding quarrels with more diligence. The notaries did, too, in their own documentation. In the end, the court's justice retained some of its confessional nature, carefully recorded evidence, protected defendants, and was geared particularly to overseeing the regulation of the clergy, one of the primary mandates of church courts, after all, and a busy job in a diocese with a large clerical population.

Appendix: Transcriptions of Select Cases

The original Latin in its late medieval, southern French form is preserved as carefully as possible, including consistent, if sometimes idiosyncratic, choices by the notaries. The notaries often omit the "a" in "prae-," for example. Bracketed information is added for clarification when deemed necessary. The notaries' sporadic use of grammatical symbols indicating sentence or section breaks (periods and slashes) were similarly kept here. Notaries did not uniformly capitalize the names of peoples and places; for clarity and ease of reading, proper nouns have been capitalized.

Text 1a. Querimonia per fiscum facta dominio vicario

Discretus vir magister Arnaudus de Abrigiis viceprocurator fiscalis . . . cum gracia non sine querela curavit exponere / Ad ipsum dominum viceprocuratis fiscalis noticiam devenisse quod . . . vicesima septima mensi . . . Novembris nonulli clerici huius civitatis iniquitatis filii de nocte circa horam decimam data prodicta opera. ut Astorgius de Petra neophitus tunc in eius lecto iacens / sub falsis inter signis apud monasterium duarum monialium huius civitatis alloquutus [*sic*] duarum abatissam ipsius monasterii accederet / applicato ante ipsum monasterium eodem Astorgio / ibi fuerunt eum agressi quem verberibus taliter afexerunt [*sic*; affecerunt] quod ex vulneribus illatis in multis sue personam . . . sanguis videlicit emanaverit ex quibus vulneribus mortis excidium prefatus Astorgius incurrisset si supervenerit resistencia. prefatis agressoribus non obfuisset super quibus petivit per eundem dominum vicarium inquiri et deberi iusticiam. sibi ministrari verum cum intelligat Cristoforum Danielis et Antonetum eius fratrem de premissis aliquid sciri cum eis petivit debitas informationes recipi et eos ad hoc vocari

Dominus vicarius audita querimonia huiusmodi ordinavit dictos Cristoforum et Antonetum fratres coram eo vocari et sum eis legitimas informationes recipi . . .

Retulit Salvator Arnaudi serviens episcopalis de mandato eiusdem domini vicari citasse [*sic; sycopated* citavisse] prefatos Cristoforum et Antonetum Danielis fratres veritati testimonia perhibuit

Comparavit coram prefato domino vicario dictus magister Arnaudus de Abrigiis producens in testes precitatos quos recipi et iurari ac cum eis informationes petivit recipi

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Dominus vicarius exacto iuramento ad sancta dei evangelia adicto Cristoforo ibi . . . de veritate dicenda eum interrogavit si aliquid sciat de premissis contentis in predicta querimoniam dixit et respondit eius medio iuramento quod non

Interrogatus in quo loco ipse sumpsit cenam heri dixit quod in domum privam cum patre matre fratre et familia suis

Interrogatus si sumpta cena exivit domum suam predictam dictis quod sic

Interrogatus quo irruit dixit quod apud monasterium duarum monialis quesitu dominum Astorgium presbiterum de Vaison qui illic cenasse dicebatur

Interrogatus si irruit solus dixit quod non imo cum Antoneto eius fratre ipsius concommitanto [*sic*]

Interrogatus si ipsum monasterium intraverit dixit quod non ymo dictum dominum Astorgium expectavit subtus tectum magistri Barthomei Chayssi cum predicto eius fratre

Interrogatus si aliquis ultra fratrem suum predictum erat secum dixit quod non

Interrogatus que hora erat dixit quod poterat esse octo hore vel circa

Interrogatus si secum defferebat [*sic*; deferrebat] lumen dixit quod non

Interrogatus si viderit ante dictum monasterium prefatum Astorgium dixit quod non

Interrogatus si aliquem alium vidit dixit quod non nisi quendum Gomium qui eum fuit alloquutus [*sic*]

. . .

Antonetus Danielis testis pro secreta informacione receptus et iuratus ac interrogatus super premissis dixit nichil scire de eis

Interrogatus si post cenam heri domum suam exiverit dixit quod non / deinde conveniens coram ipso teste loquente predicto eum Cristoforum eius fratris dixit quod post cenam irruit ad predictum monasterium quaesitum dictum Cristoforum eius fratrem

Interrogatus si solus irruit apud dictam monasterium dixit quod sic

Interrogatus ubi comperit dictum Cristoforum / dixit quod comperit eum ante hospicium cellea qui veniebat adicto [*sic*; ad dicto] monasterio

Interrogatus si veniebat solus dixit quod non nam veniebat cum quodem eius cognato qui est de Insula

Interrogatus si veniebat cum vel sine lumine dixit quod cum lumine nam defferebat [*sic*; deferrabat] unam candellam incensam

Interrogatus que hora erat dixit quod erat octava vel circa

Interrogatus si viderit dictum Astorgium dixit quod non

Interrogatus si viderit aliquem alium ante dictum monasterium dixit quod non cum non fuerit

Interrogatus si sit clericus dixit non

S.g.b.s.

paulo post comparavit coram eodem domino vicario prefatus de Abrigiis et actentis variacionibus per dictos fratres in eorum deppositionibus [*sic*] factis ex quibus infertur eos esse de premissis culpabiles contra prefatum Cristoforum clericum inquiri ac eum detineri et quousque responderit et caverit

dominus vicarius ordinavit quod dictum Cristoforum inquiri et titulos contra eum formari / quem arrestavit infra domum episcopalem non recessisse donec responderit sub pena excommunicationis et xxv livres

Eodem die in curia

Nova fisci contra Cristoforum Danielis clericum Carpentoracti

Comparavit de Abrigiis dans titulos quibus petivit responderi et ulterius eundem delatum sub arresto carceris detineri maxime cum constet eum esse culpabilem tam per variationem per eum factam in depositione sua quam per informaciones per dominos officarios episcopales receptas quas produxit

Comparavit delatus qui eius medio iuramento imposita sibi pena xxv livres et excommunicationis. dictis titulos respondit per verbum negat petens se relaxari datis cautionibus

Rursus de Abrigiis petens ipsum delatum carcerari cum constet eum expremissis per eum productis culpabiles

Dominus vicarius auditis premissis / actentis variationibus per dictum danielem delatum factis adepositione sui fratris exquibus ac informacionibus per dominos officiarios temporales receptis / constat ipsum delatum culpabilem de sibi impositis esse / eum sub arresto tocius domus episcopalis con*stituit non recedendo sub pena excommunicationis et xxv livres i.c.e.* [*ita cautum esset*]

Source: ADV B 3334 fol. 103r–104r, 28 November 1487.

Dominus audita huiusmodi querimonia comisit mihi notario receptionem informacionem

Text 1b. In causa fisci contra Danielis

Dominus vicarius eundem Danielis eius medio iuramento ad sancta dei evangelia praestito super titilos contra eum formatis repetivit ut sequitur / Quiquidem delatus eius praedicto juramento de sibi impositis . talis esse veritas videlicet quod tribus ebdomadis . ante festum Beati Siffredi proxime . . . vel circa . de ambulando per civitatem . . . Carpentoractensis cum Bertrando Albrionis eiusdem civitis / prefatus Bertrandus / Astorgius de Petra neophytus ipsum Danielis . maximo odio astruxisse affirmavit eidem . Suggerens ipsi Danielis . ipsius de Petra verberia / Nam se habere aliquos propicios ad hoc imotos assignavit cui quid Albrionis prefatus Danielis . sub hac condicionem assencit quod in verberio huiusmodi prefatus Astorgius taliter tractaretur quod sue persone [*sic*] excidium nec aliud grave et pateretur determinantem propter quod ipsi Danielis et Albrionis possent . . . alia graviora incurrere / Proinde . quadam die de qua praeparanto recolit ipse delatus quaquidam die celebrabantur impice [*sic*; impie] In domo Gigundassio dum prefatus Danielis domum ipsam intrasset / dictus Astorgius de ipso Danielis verba similia . submissa voce praetulit in aure videlicet . . . valent home la mayson es ben Reconbrada / quod inde per eundem Albrionis sibi Danielis extitit . . . Suadens iterato verber ipsius Astorgiis quod ipse Cristoforus sub condictione concurerunt praedeliberata / Expost / videlicet die festivitatis Beati Siffredi proxime preteriti vacante per civitatem pro eius negocii scilicet eodem Cristoforo pro ipso ad eius domum prefatus Albrionis bina vel trinia vice

mandavit / et facto vesper ipsius diei / ac per eius familiares sibi relato quod dictus Albrionis eum pecierat / ad eum celeriter se contulit quem reperit in eius domo et habitis . . . aliquibus verbis prefatus Albrionis ipsi Danielis verber predictum suasit . . . prefatus Danielis consencit sub condicione predicta / et habitis pluribus verbis inter eos de modo fiendi et ubi id fieret tandem . . . ut spectaretur post cenam qua sumpta reddiret [*sic*] ad domum eiusdem Albrionis prefatus Danielis plenius deliberatumque super hoc / quod fecit ipse delatus vocato secum nobili Johanne de Sancto Romano cum dedit intelligi quod ibat apud duabus moniales quaesivi[sse] Dominum Astorgium presbiterum de Vasione qui illic senaverat [*sic*; cenaverat] et aplicato ipso cum dicto nobili Johanne de Sancto Romano domum dicti Albrioni ac eorum . . . accesserunt una apud monasterium dominae monialium cum duobus hominibus quos non cognoscit ipse delatus et eis ibi aplicatis ac latenter sedentibus super quoddam scamno ante domum magistri Bartholomei Chayssi dictum Astorgium ibidem expectarent et plurimus staret Retro cesserunt [*sic*] versus Fontem Costelli [*a street in Carpentras*] et dum Ibi fuerunt prefatus Albrioni predictis duobus hominibus domum habitacionis Guilli Rostagni mostravit in quam prefatus Astorgius dormiebat consulens eis et suadens ut alter ipsorum eundem Astorgium vocaret et accederet apud dominam abbatissam dicti monasterii dans ei falso inteligi [*sic*] quod ipsa domina abbatissa . est eum loquutura [*sic*] quem quidem Astorgium si contingat apud dictum monasterium accedere insequantur ambo ubi videlicet ante eudem monasterium . Ipsum Astorgium capiant [*sic*] verberibus atroxibus pr[a]egravaverunt et afficarunt [*sic*; affixerunt] usque fractionem [*sic*] unus aut suorum brachium aut tibiam inclusive [*sic*] . quo facto prefatus Danielis apud eius domum cum dicto nobili de Sancto Romano accessit relictam ibidem predictis huiusmodi Albrionis

Interrogatus si fuerit putatis in verbo huiusmodi dixit quod non
Interrogatus si dictus de sancto Romano aliquid de hoc sciverit quod non

Source: ADV B 3334 fol. 110r–v, 11 December 1487 (Fisc. c. Daniel).

Text 2. In causa fisci contra magistrum Nicolaum Sayini

Coram domino vicario in eius camera comparavit dominus Bertrandus Rostagni procuratus fiscalis quo eidem domino vicario exposuit Girardum de Frande ex verbero quod passus est a dicto delato fere ultimum vice diem sustinere et esse plurium dubius ne ex predicto verbero et ictu per ipsum magistrum Nicolaum eidem de Frande ad caput inflicto mortem incuriat / quod . . . petivit eundem magistrum Nicolaum securius carcerari et custodiri

Comparavit magister Nicolaus petens comicti magistros Iohannem Dominici et Andree Giraudi barberis [*sic; the notary appears to be indicating barber-surgeons*, barbitonsorem] ut eundem Giraudi visitent / ac inde refferant si ex verberis predicto sit mortem incursus

Dominus vicarius prefatis . . . comissit ut una cum magistrum Reginaldo Thome notario inquisitionis . . . et mecum notario . . . dictum Giraudum visitent et vulnus seu vulnera palpent ac inde eorem mediis iuramento reffereant si vulnera que sustinent sunt traditura morti eundem Giraudum

Quiquid barberi intimata eis huiusmodi comissione per eundem magristrum Reginaldum et me / ac eius e vere . . . ad domum eiusdem Giraudi se contulerunt ipsum quem Giraudum et quoddam vulnus quod habet in capite inflictu visitarent et facta solerti [*sic*; sollerti] visitatione per dictum Giraudum ac modica per eundem dominici / per quem ipse Giraudus non passus est se palpari / eorum mediis iuramentis retulerunt / eundem Giraudus esse de facili a dicto vulnere curando et sanando ex quo nequam mortem incurret nisi divina clemencia aliud de eodem Giraudo statueret que ad dictorem barberiorem relacionem scripsi ego Elziarius Raphaelis notarius et putantis causae scriba

Source: ADV B 3334 fol. 136v, 17 May 1488 (Fisc. c. Sayni).

Retulit Molhati citasse Giraudum de Frande mercurius visure eundem magistrum Nicolaum pro dampnis [*sic*] et interesse ipsius Girardi comendari cautionibus et relaxari

Comparavit Achardi una cum dicto magistro Nicolao accusans contumaciam eiusdem citati in cuius contumacia petivit se admitti ad cautionem et se relaxari

Comparavit honesta mulier uxor eiusdem Giraudi consenciens quod dictus magister Nicolaus relaxatur prestitus [*sic*] ydoneis cautionibus de . . . resignando omnia dampnos interesse . . .

Dominus vicarius actento [*sic*] consensu uxoris eiusdem Giraudi praefatum magistrum Nicolaum cautionibus ydoneis de resignando dampna . . . eiusdem Giraudi comendavit [*sic*] quibus prestitis eum ab arresto relaxavit

Source: ADV B 3334 fol. 138v, 17 May 1488 (Fisc. c. Sayni).

Text 3. Fisci contra Bartholomeum Caneneti Carpentoracti

Iniuncto fisco contra Bartholomeum Caneneti
Exhibitio staterarum

Notabilis Claudius de Albarusso locumtenens banili [*sic*; ballivi] de Carumbo coram dominum G. Vernarelli comparavit dicens fuisse monitus per litteras huius curiae ad iusticiam Bartholomei Caneneti clerici ut restitueret quisdam stateras. per eum in domo eiusdem Caneneti captas restitueret et quia stateres huiusmodi sunt minus legales Ideo illas ipsi domino locumtenenti una cum . . . ponderibus non legalibus cum quibus ipse Caneneti a longo tempore . . . non fuit veritas defraudere eidem domino locumtenenti exhibuit et michi realiter tradidit pro debita iusticia ministranda / Et dictus dominus locumtenens . . . [*eum*] iussit sub arresto curiae detineri quousque aliud fuerit ordinatus Et hoc sub pena excommunicationis

Source: ADV B 3334 fol. 28v, 11 April 1487 (Fisc. c. Caneneti).

Comparavit delatus qui se putavit recognoscere stateras et respondere titulis

Comparavit Dominus Ludovicus Mussi procurator fisci imponens eidem delato quod licet sit prohibitum omnibus mercatoribus ne falsa pondera neque falsas stateras teneat

i Nicolomius prefatus delatus quasdem stateras falsas et minus legales unam plus altera ponderantem ac certa pondera falsa et lenia non ponderancia . . . sic in premissis gravissime delinquendo

ii Item quod prefatus delatus eisdem ponderibus et stateris longo tempore ususus [*sic*] fuit ac cum eis pisces sascos [*sic*; salsos, *as below*] et recentes et alias mercancias ponderavit et vendidit populum defraudando et in promissis gravissime deliquendo

iii Item quod predicte statere et pondera quas exhibuit procuratoris prefatus fuerent in apotheca et in loco . . . ubi ponderatur / prefati delati / comparante per officiarios de Carumbo ac inde penes . . . curiam reducte ad fines de eodem delato iusticiam ministrando

Super quibus petivit iusticiam sub ministrari ac eundem delatum de predictis excessibus puniri et castigari ice [ita cautum esset]

Dominus vicarius prefatum delatum ibi . . . eius medio iuramento interrogavit utrum . . . stateram fuit ille quem fuerunt capta per officiarios Carumbi in eius apotheca qui respondit quod sic

Deinde facta recognitione huiusmodi precepit eidem quis titulis predictis

Responderit singulariter singulis per verbum confitetur vel negat

Confessus ibi comparavit dictus delatus qui eius medio iuramento imposita sibi pena xxv livres dictis titulis respondit ut sequitur. ut primo titulo confessus fuit dictas stateras tenuisse sex vel septem diebus / pondera vero dixit non cognoscere nec scire indicare si fuit illa que fuerunt capta in eius apotheca

Ad secondum dixit et confessus fuit dictis stateris usus fuisse et cum eis ponderasse sex vel septem diebus et non ultra

Interrogatus per dominum quid cum dictis stateris ponderavit dixit quod pisces salsos et recentes

Interrogatus cur ponderabat cum eis ex eo quod sciebat eas esse falsas dixit quod credebat eas esse bonas

Interrogatus trientum confitetur dictas stateras fuisse captas in sua apotheca per locuntenentem banilli [*sic*; ballivi] Carumbi

Rursus prefatus Mussi acceptans confessata [*sic*] petens temporem ad probandum negata et eundem delatum detineri quousque caverit

Dominus vicarius et officialis eundem delatum reputavit sufficiere quem monuit ut faciat deffensiones [*sic*] suas si quas facere vellit ad quod faciendum et fisco ad probandum ad octo

Source: ADV B 3334 fol. 42v–43r, 18 May 1487 (Fisc. c. Caneneti).

Relatio super legalitate vel inlegalitate staterarum Bartholomei Caneneti

Retulit michi notario infra scripto magister Michael Guigonis poterius de Carpentoracti . . . euis medio iuramento ad sancta de evangelia praestito

se stateras per curiam sibi exhibitas unacum tribus ponderibus unius libre . . . Item unam mediam libram unum quarterium et duas onzias [*sic*] visitasse et diligenter

palpasse et facta comparacione ad alia pondera legalia civitatis / comparisse stateras predictas esse minus legales. Ita quod una pars ipsarum illa scilicet cum fines sunt longiores est lenior et altera de una media onzia / Item predicta pondera libre esse lenia . . . / Item mediam libram esse leniorem . . . / Item quartuor esse bonum et legalem / Item predicte medie onzie unam ipsam esse modicum curtam / et altera esse bonam / Que ad relacionem eiusdem magistri Michaelis scripsi ego Elziarus Raphaelis notarius et putatis cause scriba

Source: ADV B 3334 fol. 132r–v, 14 April 1488 (Fisc. c. Caneneti).

Text 4. Nova fisci contra Claudium Delphini mercatorem de Carpentoracti

. . . Comparavit dictus delatus cum quo fuit super premissis eius medio iuramento inquisitum per prefatum dominium vicarium qui dixit et respondit quod mense et die contentis in titulos . . . post . . . cenasset ipse delatus in domo sua cum Johanne Lombardi agulheterio . . . et quodam pelipario tunc famulo Bartholomei Regis eius cognati . . . et alii predicti ad bonam carreriam . . . multum affectabant . . . fuerunt ante apothectam Raphaelis Amedesi haberent similia verba . . . de dicto Gaspardi ut uniam reperire unus Gaspardi / dictus Johannes Lombardi de quodam ibi tunc transemitere [*sic*] ves lo te nosse quo facto dictus socius pelliparius in eundem tunc transemitem [*sic*] quem credebant et esse videbatur et dictum Gaspardum certos lapides quos defferebat [*sic*; deferebat] . vibravit et ipse loquens similiter in predictum proiexit quendam lapidem quem gestabat in pugno . . . quo facto prefatus Johannes Lombardi agressus est prefatus transemitem cum quodem bacculo quem portabus in manu quem multis ictibus cumulater acuter verberavit ita quod ipse verberatus voce magna clamabat / alarme alarme / quod audiens ipse delatus fugare dedit versus domum suam ad quam relicto retro per vias pervenit indirectas

Interrogatus ipse delatus per eundem dominum vicarium si ille verberatus erat ille Gaspardus quem querebant dixit credere quod non

Interrogatus quis erat ille verberatus per eos dixit quod tunc prohibente caligine noctis non cognoscebat eum tamen post audivit dici fuisse dictum Fauconerium

Interrogatus si ipse delatus post huiusmodi verberatum auffugerit [*sic*] aputato civitiate / dixit quod sic post monitorem generalem impetratum per dictam Fauconerium recessit metu carceris

Source: ADV B 3334 fol. 1r–1v, 1 January 1487 (Fisc. c. Dalphin).

Text 5. Fisci contra magistrum Iohannem Clarenci barberium

Fiscalis contra magistrum Iohannem Clarenci barberium

Comparavit de Abrigiis dans titulos verbo super quibus petivit inquiri contra delatum ac cum detineri donec eis responderit et caverit

Dominus vicarius eundem delatum hic putatum eius medio iuramento ad sancta dei evangelia praesto interrogavit si ipse delatus sit uxoratus / qui respondit quod sic

Interrogatus si praeter uxorem ad eius panem et unum tenuerit aliquam mulierem dixit quod sic

Interrogatus quis est illa dixit quod quandam Margarita de Regio

Interrogatus si ipsa Margarita est uxorata dixit quod sic eundem de Regio in provincia

Interrogatus quando tempore ipsam Margaritam tenuit dixit quod tribus aut quatuor annis

Interrogatus ubi est nunc ipsa Margarita dixit quod est in hac civitate que reliquit eum et nunc moratur cum magistri audita Rue Barberio

Interrogatus si singulis diebus dominicis ipse delatus pargat [*sic*] ad ecclesiam auditurus missam parochialem / dixit sic pro maiori parte

Interrogatus si videlicet audiverit curatum denuntiantes excommunicatos omnes concubinos et concubinas / dixit quod sic

Interrogatus ante et post denunciationem huiusmodi dictam Margaritam tenuerit et carnaliter cognoverit dixit et respondit quod sic

Interrogatus si hoc anno ipse delatus corpus dominicus receperit dixit quod si in hac civitate et in ecclesia . . .

Interrogatus si die Sabbati proxima accessit ad domum sine appothecta [*sic*] magistri Andree Gruandi dixit quod sic

Interrogatus si ibi tumultum fecerit dixit quod sic

Interrogatus si eundem Gruandi et eius familiares pro eo quam dictam Margaritam tenebat verberare voluit ense seu pugno nudo dixit quod sic sed non pugno nudo

Interrogatus si pugionem evaginaverit dixit quod non bene recepit illud in manu acta evaginare non potuit

Interrogatus si dictum pugionem receperit animo offendendo sine occidendo predictum magistrum Andream Gruandi aut alique de eius societatis dixit et respondit quod non

Interrogatus si ad portum Grandium [*sic*] . . . ictibus percussit dixit et respondit quod non

Interrogatus si de deo iuraverit dixit quod una aut terna [*sic*] vice et non amplius /

Interrogatus si die hermia percussit sum lapidibus ad fenestras domus eiusdem Gruandi dixit quod non /

. . . Comparavit dictus delatus petens se relaxari paratus se offerens cavere ydonea . . . nolle aliquas facere deffesiones ymo se nostrae eiusdem dominum vicarium se submitit

Dominus vicarius prestit per eundem delatum cautionibus ydoneis de stando iuri i c e [ita cautum esset] ac corporali juramento supra sacro sanctu te igitur de amplius non tenendo dictam Margaritam nec frequentando seu eam alia cognoscendo minimusque sub uno tecto se reperiendo cum eam ipsum ab arresto relaxavit . . . ibidem dictus magister Iohannes iuramente in decreto . . . super sancto te igitur corporaliter tactu praestitit ac submisit penam voluntarie . . . ac se obligavit de stando iuri indicatum solvendo et se reputando in forma Pro quo dicti magistri ymo necque se constituit fidemissis in forma actum in camera . . . domino Perrucio Bertrandi Johanne Colandi cleric et Astorgio de Petra neophyto

Source: ADV B 3334, fol. 114 r–v, 24 December 1487 (Fisc. c. Clarenci).

Text 6. Fisci contra canonicos

Comparavit dictus dominus prior dicens prefatos dominos canonicos generaliter et specialiter sumpto rebelionis spiritualis in ipsum domum priores [*sic*] multas graves iniurias et detestabilia obprobria dietim infundere . . . [dictus dominus] petens de eis sibi debita iusticia ministrari . . . Comparavit prefati domini canonici dicentes et

proponentes . . . ipsi domino priori aliquas iniurias nisi provocatos ab eo diffundisse ymo ipse domius prior eos tali odio et malivolencia prosequitur / ut cum eis comedere nec bibere Recuset eos in eorem pitancia . . . quod nedum religiosi ymo nec bubulci et viliores personae debeant contentari / eos . . . [prior] deturpat et diffamat et alia detestata facit et profert . . . aliqua verbo . aliqua scriptis ipsi domino vicario specificaverunt de quibus petiverunt sibi iustaciam ministrari

Source: ADV B 3334, fol. 111v, 17 December 1487 (Fisc. c. Canonicos).

Text 7. Fisci contra Arboris

Comparavit Dionisius de Stagneris clavarius domus episcopalis . . . Imposuit eid quod licet nemini liceat verbis nec facto sanctissimum dominum nostrum papam impugnare . . . dominus Antonius die lune proxime . . . ante apothectam magistri Marcalis Boneti notarii carpentoracti circa horam ave marie praefatum dominum nostrum papam impugnando talia verba aut simila in effectu protulit quod debereat prefatus dominus noster Papam compellere Judeos civitatis Carpentoracti ab obsignando festa Christianorum. Sic crimen lese magestalis comittendo [*sic*; commitendo] ice [ita cautum esset]

Item premissis non contentus sed mala perverbis cumulates quod eis . . . papae et iura permittant Judeos . . . comitatu binere etiam inter christianos ut memoriores fuit passionis suum reddemptoris [*sic*]. Populum exitando ad insultando contra Judeos et comittendi scandalam alta voce protulitet vociferavit [*sic*] sic quod ab omnibus intelligi potuit / quod prefati Judei deinde expulsi ac acarreria Sancti Johannis [*a street at edge of the Jewish quarter*] fuerit et nunc aperiat Judei et quod bene esset factum si a tota . . . expellerentur et eiicerentur sic ice

Item ulterius non contentus praemissis quod quod ex laudabili deliberatione consilii putatis civitatis consultus et deliberatus fuerit ac inde ad . . . deliberationem confirmatum et ordinatum per Reverendum dominum guberantorem et regentem comitatum venerabilem que Judei in magna Judea clauderentur et recluderentur multis bonis respectibus. Nicholomius ipse Arboris praefatum reverendum dominum gubernatorem reverevendum dominum regentem et totum consilium Capentoracti oppugnando verba sua dirigendo honorabili Johanni Pelleteri . . . Carpentoracti. In effectu prothulit [*sic*; protulit] . . .

Super quibus pecivit eundem Arboris puniri et castigari ac eum detineri . . . et Responderit et caverit

Dominus vicarius exacto juramento adicto [*sic*] domino Antonio Arboris de fideliter respondendo titulis praedictis. qui responderit ut sequitur ut primo titulo negat dixesse sanctissimum dominum nostrum papam debere cogere Judeos ad excolendos festa Christianorem . dixit tamen confitetur dixesse / . . . papam hoc de postetate absoluta posset

Ad secundum Negat titulum prout ponitur / confitetur tamen dixesse que exque aloris expresses in titulo eiecti fuerunt que si placitus sanctissimi domini nostri pape esset prout fuit Regis francie que posset dictos Judeos . . . expellere

Ad trientem Negat contenta in eodem

Rursus clavarius admisso fisco ad probandum ad quod faciendem . . . assiginat octo et Reputato dicto Arboris . . . eum relaxavit ab arresto carceris . . .

Ibidem dictus Arboris super praemissis promisit stare juri . . . ac se respondare tociens quociones ice sub obligatione opportune . . . actum in camera . . .

Source: ADV B 3334 fol. 33v–34r, 2 April 1487 (Fisc. c. Arboris).

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